

(i) Is solvent but presents a supervisory concern to the OTS because of the member's financial condition; and

(ii) Has reasonable and demonstrable prospects of returning to a satisfactory financial condition.

(b) *Terms and conditions.* Advances made by a Bank to a member savings association under this section shall:

(1) Be subject to all applicable collateral requirements of the Bank, this part and section 10(a) of the Act (12 U.S.C. 1430(a)); and

(2) Be at the interest rate applicable to advances of similar type and maturity that are made available to other members that do not pose such a supervisory concern.

§ 935.19 Liquidation of advances upon termination of membership.

If an institution's membership in a Bank is terminated, the Bank shall determine an orderly schedule for liquidating any indebtedness of such member to the Bank; this section shall not require a Bank to call any such indebtedness prior to maturity of the advance. The Bank shall deem any such liquidation a prepayment of the member's indebtedness, and the member shall be subject to any fees applicable to such prepayment.

Subpart B—Advances to Nonmembers

§ 935.20 Scope.

The requirements of subpart A of this part apply to this subpart, except as otherwise provided in § 935.21 of this subpart.

§ 935.21 Advances to the Savings Association Insurance Fund.

(a) A Bank may, upon receipt of a written request from the FDIC, make advances to the FDIC for the use of the Savings Association Insurance Fund. The Bank shall provide a copy of such request to the Board.

(b) Such advances shall:

(1) Bear a rate of interest not less than the Bank's marginal cost of funds, taking into account the maturities involved and reasonable administrative costs;

(2) Be for a maturity acceptable to the Bank;

(3) Be subject to any prepayment, commitment or other appropriate fees of the Bank; and

(4) Be adequately secured by collateral acceptable to the Bank.

PART 940—[REMOVED]

2. Part 940 is removed and reserved.

Dated: April 26, 1993.

By the Federal Housing Finance Board

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 93-11305 Filed 5-19-93; 8:45 am]

BILLING CODE 5725-01-M

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 935

[No. 93-44]

Advances to Nonmember Mortgagees

AGENCY: Federal Housing Finance Board.

ACTION: Interim final rule and request for comments.

SUMMARY: The Federal Housing Finance Board (Board) is amending its final rule on Federal Home Loan Bank (Bank) advances to establish revised and new requirements governing advances to nonmember mortgagees, and to implement provisions of the Housing and Community Development Act of 1992 (HCDA) making it easier for qualified nonmember mortgagees that are state housing finance agencies (SHFAs) to receive special purpose advances.

DATES: Effective date: June 22, 1993.

Comment date: Comments must be received by July 19, 1993.

ADDRESSES: Send comments to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Christine M. Freidel, Financial Analyst, (202) 408-2976, Thomas D. Sheehan, Assistant Director, (202) 408-2870, District Banks Directorate; James H. Gray Jr., Associate General Counsel, (202) 408-2552, Sharon B. Like, Attorney-Advisor, (202) 408-2930, Charles Szlenker, Attorney-Advisor, (202) 408-2554, Brandon B. Straus, Attorney-Advisor, (202) 408-2589, Office of Legal & External Affairs; Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Introduction

On October 1, 1992, the Board published for public comment a proposed rule containing amendments to its regulations governing Bank advances. See 57 FR 45338 (Oct. 1, 1992). The proposed rule included a discussion of the terms and conditions under which the Banks may extend credit in the form of advances to nonmember mortgagees under section 10b of the Federal Home Loan Bank Act (Act), 12 U.S.C. 1430b. Subsequent to

publication of the proposed rule, Congress enacted the HCDA, Pub. L. 102-550, 106 Stat. 3672 (1992). HCDA section 1392 amended section 10b of the Act, 106 Stat. at 4009 (to be codified at 12 U.S.C. 1430b(b)), by recodifying the existing text of section 10b as section 10b(a), and creating a new section 10b(b).

New section 10b(b) of the Act establishes special collateral requirements for advances to SHFAs that are made for the purpose of facilitating mortgage lending that benefits individuals and families meeting the income requirements specified in sections 142(d) or 143(f) of the Internal Revenue Code of 1986 (IRC), 26 U.S.C. 142(d), 143(f).

In general, under section 10b(a) of the Act, eligible nonmember mortgagees may pledge only FHA-insured mortgages or securities backed by such mortgages as collateral for Bank advances. However, pursuant to new section 10b(b) of the Act, an advance to a SHFA eligible under the nonmember mortgagee lending requirements may be secured by collateral other than FHA-insured mortgages, provided the advance proceeds are used for the purpose of facilitating mortgage lending that benefits certain low- and moderate-income individuals and families, the advance otherwise meets the requirements of section 10(a) of the Act, and any real estate collateral pledged as security for the advance is comprised of single family or multifamily residential mortgages.

The HCDA amendment to the Act requires changes to the nonmember mortgagee provisions in the proposed advances rule. Instead of withdrawing the proposed advances rule and reissuing it for comment with these changes incorporated, the Board is addressing the nonmember mortgagee requirements in this interim final rule. The final advances rule, which does not include the nonmember mortgagee provisions, will be published elsewhere in this issue of the *Federal Register*.

The Board received four comment letters addressing the nonmember mortgagee provisions published in its proposed advances rule. In general, the letters expressed support for the proposed provisions. A discussion of the comment letters is included in the analysis of this interim final rule.

The Board invites comments on all aspects of this interim final rule on nonmember mortgagee advances.

II. Advances to Nonmember Mortgagees

A. Section by Section Analysis

This interim final rule amends § 935.20 of the final advances rule to provide that advances to nonmember mortgagees generally shall be subject to the provisions in subpart A of part 935, governing advances to Bank members, except as otherwise provided in § 935.22 of subpart B, which applies specifically to advances to nonmembers. This ensures that advances to nonmembers operate within the same regulatory framework as member advance programs and without special benefits to nonmembers.

Section 935.22(a) of this interim final rule authorizes a Bank, subject to the Act and this part 935, to make advances to an entity that is not a member of the Bank, if the entity qualifies as a nonmember mortgagee pursuant to section 10b(a) of the Act and § 935.22(b) of the interim final rule.

Under section 10b(a) of the Act, as amended, a Bank may make advances to nonmembers that are approved mortgagees under title II of the National Housing Act (NHA), 12 U.S.C. 1707 *et seq.* See 12 U.S.C. 1430b(a). The administration of title II of the NHA is the responsibility of the Federal Housing Administration (FHA), a unit of the Department of Housing and Urban Development (HUD). HUD approval of an entity as a mortgagee authorizes such entity to buy and sell FHA-insured mortgages.

Section 935.22(b) of the interim final rule incorporates the four statutory eligibility requirements that an entity must meet in order to be designated a nonmember mortgagee eligible to borrow from a Bank:

(1) The mortgagee must be chartered under law and have succession. A corporation, or other entity that has rights, characteristics and powers under applicable law similar to those granted a corporation, or a government agency, meets this requirement;

(2) The mortgagee must be subject, pursuant to statute or regulation, to the inspection and supervision of a Federal, state or local government agency;

(3) The mortgagee must lend its own funds as its principal activity in the mortgage field; and

(4) The mortgagee must be approved by HUD pursuant to HUD's regulations (24 CFR part 202), under title II of the NHA (12 U.S.C. 1707 through 1715z-20).

One comment letter recommended that the language in the Act defining nonmember mortgagees specifically include the mortgage banking subsidiaries of member institutions.

Such a change would require amendment of the Act by Congress. However, Bank advances may be available to such entities under the Banks' authority to lend to eligible nonmember mortgagees, if they meet the eligibility criteria set forth in the Act and in this interim final rule.

The Act provides that advances made under section 10b(a) are not subject to certain other provisions of the Act. See 12 U.S.C. 1430b(a). For example, such advances are not subject to member stock purchase and collateral requirements, or to restrictions on Bank lending to members that are not Qualified Thrift Lenders (QTLs). See, e.g., 12 U.S.C. 1426(b), 1430(a), 1430(e)(1)-(3). However, as noted above and as provided in the proposed advances rule, § 935.20 of the interim final rule makes the regulatory requirements applicable to the Banks' member advances programs also applicable to their nonmember advances programs, except as specifically provided in § 935.22 of the interim final rule. The Board expects the Banks to apply the advance application requirements, credit underwriting standards, collateral and safekeeping procedures, restrictions on lending to institutions without positive tangible capital, advance maturity requirements, prepayment fees, and other requirements applicable to members under subpart A of part 935 and the Board's policy guidelines, no less stringently to eligible nonmember mortgagees.

Section 935.22(c) of the interim final rule establishes the procedure by which an entity qualifies as a nonmember mortgagee eligible to receive Bank advances under section 10b of the Act. An entity seeking to establish its eligibility for advances as a nonmember mortgagee is required to submit documentation evidencing that it meets all of the requirements set forth in § 935.22(b), to the Bank whose district includes the state in which the entity maintains its principal place of business. The Bank also shall require any financial or other documentation needed to enable the Bank to determine that advances may be safely made to the entity. Further, an entity seeking to qualify as a SHFA must submit documentation evidencing that it meets the definition of a SHFA under § 935.1 of this part. The Bank shall then forward the documentation, along with its evaluation of the applicant's financial condition, to the Board. The Board will review the documentation and notify the Bank of its determination regarding the nonmember's eligibility to receive advances under section 10b (a) and (b).

This provision is a change from the proposed advances rule, under which the Banks would have had the responsibility for determining nonmember mortgagee eligibility. This interim final rule retains the authority to determine nonmember mortgagee eligibility with the Board to ensure that a uniform review process is developed to determine nonmember mortgagee eligibility.

Section 935.22(d)(1) of the interim final rule implements the Act by providing that nonmember mortgagee advances shall, in general, be collateralized by FHA-insured mortgages. See 12 U.S.C. 1430b(a). This section permits a Bank to additionally accept as collateral, securities representing an interest in the principal and interest payments due on a pool of FHA-insured mortgage loans, provided the Bank obtains evidence from the nonmember mortgagee that the securities are backed solely by FHA-insured mortgages.

Section 935.22(d)(2) of the interim final rule implements the special collateral requirements applicable to certain advances to SHFAs under section 10b(b) of the Act. Such advances may be secured by collateral other than FHA-insured mortgages, provided that the advances otherwise meet the requirements of section 10(a) of the Act and any real estate-related collateral is comprised of single family or multifamily residential mortgage loans as described specifically in § 935.22(d)(2)(i) herein. In order for advances to qualify for the expanded collateral treatment, the advance proceeds must be used for the purpose of facilitating mortgage lending that benefits individuals or families with income levels specified in sections 142(d) or 143(f) of the IRC. See 26 U.S.C. 142(d), 143(f).

Section 935.22(d)(2)(i)(A) of the interim final rule provides that SHFAs using advances for the special purpose described above may pledge collateral eligible under sections 10(a) (1) or (2) of the Act, *i.e.*, fully disbursed, whole first mortgages on improved residential real property, agency and privately issued mortgage-backed securities, and government securities. See 12 U.S.C. 1430(a) (1), (2). SHFAs may not pledge deposits in a Bank, generally eligible under section 10(a)(3) of the Act, *see id.* section 1430(a)(3), because SHFAs generally are not eligible under the Act to maintain such deposits, except for the limited purpose of maintaining compensating balances as discussed below. See 12 U.S.C. 1431(e)(1).

Special purpose advances may, to a limited extent, be secured by collateral

eligible under section 10(a)(4) of the Act, see *id.* section 1430(a)(4), provided the collateral is comprised of single family or multifamily residential mortgage loans and, pursuant to section 10(a)(4) of the Act, a security interest in such collateral can be perfected. Consistent with the limit on category (4) collateral pledged by members under section 10(a)(4) of the Act, § 935.22(d)(2)(i)(B) of the interim final rule limits collateral pledged under this section to 30 percent of a SHFA's capital, calculated according to Generally Accepted Accounting Principles (GAAP), as determined by the Bank.

Section 935.22(d)(2)(ii) of the interim final rule requires that a Bank, prior to funding an advance pursuant to paragraph (d)(2), obtain written certification from the SHFA that the proceeds of the advance shall be used for the purposes described in section 10(b) of the Act. The interim final rule does not provide for the use of a proxy mechanism, similar to that used in the final advances rule to ensure that advances to non-QTLs are used only for residential housing finance purposes because, unlike commercial banks and savings associations, SHFAs do not produce uniform financial statements on a regular basis. See 12 CFR 935.13.

Section 935.22(e)(1) of the interim final rule provides that a Bank, in its discretion, shall determine whether, and on what terms, it will make advances to eligible nonmember mortgagees, subject to the provisions of this paragraph (e). As in the proposed advances rule, § 935.22(e)(2) requires the Banks to price advances to nonmember mortgagees to cover the funding, operating and administrative costs associated with making such advances. The pricing may reflect the credit risk associated with lending to the nonmember mortgagee, and other reasonable differential pricing criteria, provided that the Bank applies the criteria for such differential pricing equally to all nonmember mortgagee borrowers. One Bank comment letter expressed support for these pricing provisions.

Consistent with the proposed advances rule, § 935.22(e)(2)(ii) of the interim final rule provides that the pricing of advances to a nonmember mortgagee shall compensate the Bank for the absence of a capital stock investment by the nonmember mortgagee in the Bank. A Bank may implement this provision by requiring the nonmember mortgagee to maintain a compensating balance with the Bank. In response to a Bank comment letter requesting clarification as to whether a

compensating balance maintained by a nonmember mortgagee may be interest bearing, the interim final rule provides the Banks with the discretion to make such a determination.

Section 935.22(e)(3) of the interim final rule provides that, in accordance with section 10(b) of the Act, the principal amount of any advance made to a nonmember mortgagee may not exceed 90 percent of the unpaid principal of FHA mortgage collateral pledged as security. This requirement does not apply to collateral pledged by SHFAs to secure special purpose advances as described in § 935.22(d)(2).

Section 935.22(f)(1) of the interim final rule provides that a Bank shall require a nonmember mortgagee applying for an advance to agree in writing to inform the Bank promptly of any change in its status as a nonmember mortgagee. The Bank will not be required to call outstanding advances to an entity that loses its HUD-approved mortgagee status or otherwise ceases to fulfill the eligibility qualifications for a nonmember mortgagee under § 935.22(b) of the interim final rule. However, pursuant to § 935.22(f)(2) of the interim final rule, the Bank may not extend a new advance or renew an existing advance to the entity, until the Board is satisfied that the entity again fulfills the requirements in § 935.22(b).

Section 935.22(g) of the interim final rule provides that a Bank may, from time to time, require a nonmember mortgagee borrower to provide evidence that it continues to satisfy all of the qualifications and requirements contained in this section.

A comment letter from a trade association recommended that advances to nonmember mortgagees be included in the statutory 30 percent Bank System limit on advances to members that are not QTLs. See 12 U.S.C. 1430(e)(2), as amended. However, the Act does not require that advances to nonmembers be included in the aggregate limit on Bank advances to non-QTLs. The non-QTL borrowing restrictions in the Act apply only to members, and the eligible mortgagees that borrow funds from the Banks under the authority of section 10(b) are not members. Therefore, advances to nonmember mortgagees have not been made subject to this requirement.

III. Notice and Public Participation

A. Administrative Procedure Act

For the reasons discussed below, the Board is not required by the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, to publish a general notice of proposed rulemaking for this interim final rule. However, the Board

considers comments from the public helpful in formulating clear and effective regulations. Accordingly, the Board is requesting public comment on this interim final rule.

Publication of notice of a proposed rulemaking is not required because the Board finds good cause that notice and comment procedure is impractical, unnecessary, and contrary to the public interest in this instance. See 5 U.S.C. 553(b)(3). Compliance with public procedure requirements in the adoption of this interim final rule would be contrary to the public interest. HCDA section 1392 amended the Act to expand the availability of Bank credit to SHFAs eligible to borrow from the Banks as eligible nonmember mortgagees and who are engaged in lending that supports a specific public purpose. The Board believes that it is important to expedite SHFA access to Bank advances in order to facilitate the flow of funds for the development of housing for low- and moderate-income individuals and families.

Compliance with public notice and comment procedures also would be impractical because the amendments made by the interim final rule are part of a group of amendments to the Board's regulations on Bank advances that were published as a final rule in May 1993, and that will become effective in June 1993. The burden on the Banks, their members, nonmember mortgagees and others seeking to understand and comply with the Board's regulations is made easier by having all of the regulations pertaining to Bank advances considered concurrently. In order to preserve the regulatory process initiated by the Board's revisions to its advances regulations, the interim final rule should be published concurrently with the final advances rule.

In addition, publication of portions of this interim final rule for notice and comment is unnecessary because those provisions of the interim final rule incorporated from the previously published proposed rule on advances have already been subject to public notice and comment procedures. See 57 FR 45338 (Oct. 1, 1992).

The Board therefore finds good cause that compliance with notice and comment procedures in adoption of this interim final rule would be impractical, unnecessary and contrary to the public interest. See 5 U.S.C. 553(b)(3).

B. Effective Date

The Board is adopting this rule as an interim final rule, to be effective on June 22, 1993. However, the Board is incorporating a 60-day comment period from the date of publication of this rule

in the Federal Register, because the Board recognizes the importance and value of public input on Bank System operations. The comments received during this 60-day period may result in revisions to this rule after its effective date.

Regulatory Flexibility Act

The Board is not required by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, to prepare a regulatory flexibility analysis for this interim final rule. The Regulatory Flexibility Act requires that a regulatory flexibility analysis be prepared whenever an agency promulgates a proposed or final rule after being required by APA section 553, *id.* at sec. 553, to publish a general notice of proposed rulemaking. See 5 U.S.C. 603(a), 604(a). The Board is not required to publish a general notice of proposed rulemaking for this interim final rule, because the Board has found good cause that notice and comment is

impractical, unnecessary and contrary to the public interest in the adoption of this interim final rule. See *id.* sec. 553(b)(B), and III.A. above. Accordingly, the Board is not required to prepare such an analysis for this interim final rule.

Paperwork Reduction Act

The information collection requirements contained in this interim final rule have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35. The Finance Board has requested that OMB approve the information collection by the date this interim final rule becomes effective.

The information collection is entitled "Evidence of Nonmember Mortgagee Status," and is described in more detail in the discussion of § 935.22 (b) and (c) of this part. Any institution that is not a member of a Bank that seeks advances as a nonmember mortgagee will be

required to provide documentation to the Board evidencing that the nonmember meets the eligibility requirements to receive Bank advances as a nonmember mortgagee described in § 935.22(b) of this part.

Further, a nonmember mortgagee that seeks to qualify as a SHFA in order to use the additional collateral eligible for special advances to SHFAs must provide documentation to the Board evidencing that it qualifies as a SHFA pursuant to § 935.22(c)(3) of this part.

Any comments on this information collection should be sent to Gary Waxman, Paperwork Reduction Project, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

In accordance with 5 CFR 1320.12 and 1320.15, the following table discloses the estimated annual reporting burden for the collection of information in this interim final rule:

ESTIMATED ANNUAL REPORTING BURDEN

Description of information collected	Average number of respondents	x	Average number of responses per respondent	=	Total average responses	x	Average hours per response	=	Total average hours
Evidence of nonmember mortgagee status	20		1		20		5		100
Total	20		1		20		5		100

List of Subjects in 12 CFR Part 935

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Board hereby amends title 12, chapter IX, subchapter B, part 935, Code of Federal Regulations, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 935—ADVANCES

1. The authority citation for part 935 is revised to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b, 1431.

2. Section 935.1 is amended by adding the definition of "State housing finance agency" in appropriate alphabetical order to read as follows:

§ 935.1 Definitions.

* * * * *

State housing finance agency or SHFA means a public agency, authority or publicly sponsored corporation that:

(1) Serves as an instrumentality of any state or any political subdivision of any state; and

(2) Functions as a source of residential mortgage loan financing in that state.

3. Section 935.20 is revised to read as follows:

§ 935.20 Scope.

The requirements of subpart A of this part apply to this subpart, except as otherwise provided in § 935.21 and § 935.22 of this subpart.

4. Section 935.22 is added to read as follows:

§ 935.22 Advances to nonmember mortgagees.

(a) *Authority.* Subject to the provisions of the Act and this part, a Bank may make advances to an entity that is not a member of the Bank if the entity qualifies as a nonmember mortgagee pursuant to section 10b(a) of the Act, as amended (12 U.S.C. 1430b(a)), and paragraph (b) of this section. A Bank may lend only to a nonmember mortgagee whose principal place of business, as defined in part 933 of this chapter, is located in the Bank's district.

(b) *Eligible nonmember mortgagee.* To qualify for an advance as a nonmember

mortgagee, an entity must meet the following requirements:

(1) *Charter.* It must be chartered under law and have succession. A corporation, another entity that has rights, characteristics and powers under applicable law similar to those granted a corporation, or a government agency, meets this requirement;

(2) *Regulation.* It must be subject, pursuant to statute or regulation, to the inspection and supervision of a Federal, state or local government agency;

(3) *Housing finance activity.* (i) The entity's principal activity in the mortgage field must consist of lending its own funds, which may include appropriated funds in the case of a Federal, state or local government agency;

(ii) An entity meets the requirement in paragraph (b)(3)(i) of this section, notwithstanding that the majority of its total operations are unrelated to mortgage lending, if the majority of its mortgage activity conforms to this requirement;

(iii) An entity that acts principally as a broker for others making mortgage loans, or whose principal activity is to

make mortgage loans for the account of others, does not meet the requirement in paragraph (b)(3)(i) of this section; and

(4) *HUD approval.* The entity must be approved by the Department of Housing and Urban Development (HUD) as a "mortgagee" pursuant to HUD regulations (24 CFR part 202), under title II of the National Housing Act (12 U.S.C. 1707 through 1715z-20).

(c) *Determination of nonmember mortgagee and SHFA eligibility.* (1) To qualify for advances under section 10b of the Act (12 U.S.C. 1430b), an applicant must be certified as an eligible nonmember mortgagee by the Board or its designee.

(2) A nonmember seeking access to advances under section 10b of the Act shall submit to the appropriate Bank:

(i) Documentation evidencing that it meets all of the requirements in § 935.22(b) of this part; and

(ii) Financial or other information, as required by the Bank, that will enable the Bank to determine that advances made be safely made to the nonmember.

(3) A nonmember seeking access to advances as a SHFA under section 10b(b) of the Act (12 U.S.C. 1430b(b)) shall submit to the appropriate Bank documentation evidencing that it is a SHFA as defined in § 935.1 of this part.

(4) The appropriate Bank shall be the Bank whose district includes the state where the nonmember's principal place of business, as defined in part 933 of this chapter, is located.

(5) The documentation submitted to the Bank by the nonmember, and the Bank's evaluation of the nonmember's financial condition, shall be forwarded by the Bank to the Board for review and approval.

(6) The Board will notify the Bank of the Board's determination regarding the nonmember's eligibility to receive advances under section 10b(a) and (b) of the Act.

(d) *Eligible collateral for advances to nonmember mortgagees—(1) General.* A Bank may grant an advance to a nonmember mortgagee pursuant to this section on the security of the following collateral:

(i) Mortgage loans insured by the Federal Housing Administration of HUD, pursuant to title II of the National

Housing Act (12 U.S.C. 1707 through 1715z-20); or

(ii) Securities representing an interest in the principal and interest payments due on a pool of mortgage loans, all of which mortgage loans meet the requirements of paragraph (d)(1)(i) of this section. A Bank shall require a nonmember mortgagee using collateral as described in this paragraph (d)(1)(ii) to provide evidence that such securities are backed solely by mortgages of the type described in paragraph (d)(1)(i) of this section.

(2) *Additional eligible collateral for special advances to SHFAs—(i) Eligible collateral.* Advances made to SHFAs for the purpose of facilitating mortgage lending that benefits individuals or families meeting the income requirements set forth in 26 U.S.C. 142(d) or 143(f) may also be secured by:

(A) Collateral described in § 935.9(a) (1) or (2) of this part; or

(B) Other real estate-related collateral, eligible under § 935.9(a) (4) of this part, provided such collateral is comprised of mortgage loans on one-to-four family or multifamily property and the acceptance of such collateral will not increase the total amount of advances to such SHFA secured by such collateral beyond 30 percent of the SHFA's GAAP capital, as computed by the Bank.

(ii) *Use of funds.* Prior to making an advance pursuant to this paragraph (d)(2), a Bank shall obtain written certification from the SHFA that the advance proceeds shall be used for the purpose described in paragraph (d)(2)(i) of this section.

(e) *Terms and conditions—(1) General.* A Bank, in its discretion, shall determine whether, and on what terms, it will make advances to eligible nonmember mortgagees, subject to the provisions of this paragraph (e).

(2) *Advance pricing—(i) Costs.* Each Bank making an advance to a nonmember mortgagee:

(A) Shall price such advance to cover the funding, operating and administrative costs associated with making the advance; and

(B) May price such advance to reflect the credit risk of lending to the nonmember mortgagee, and may apply other reasonable differential pricing

criteria associated with such lending, provided each Bank applies such pricing criteria equally to all of its nonmember mortgage borrowers.

(ii) *Compensation for lack of capital investment.* (A) The price of an advance to a nonmember mortgagee shall compensate the Bank for the lack of a capital stock investment by the nonmember mortgagee in the Bank.

(B) A Bank may satisfy this requirement by requiring the nonmember mortgagee to maintain with the Bank a compensating balance. At the discretion of the Bank, such compensating balance may bear interest.

(3) *Limits on advances.* The principal amount of any advance made to a nonmember mortgagee may not exceed 90 percent of the unpaid principal of the mortgage loans or securities described in paragraph (d)(1) of this section that are pledged as security for the advance. This requirement does not apply to collateral pledged by SHFAs to secure special advances as described in § 935.22(d) (2) of this part.

(f) *Loss of eligibility.* (1) A Bank shall require each nonmember mortgagee that applies for an advance under this section to agree in writing to inform the Bank promptly of any change in its status as a nonmember mortgagee.

(2) If a nonmember mortgagee borrower ceases to fulfill the eligibility requirements for a nonmember mortgagee pursuant to paragraph (b) of this section, a Bank may not extend a new advance or renew an existing advance to such entity, until the entity has satisfied the Board that the entity again fulfills the requirements for a nonmember mortgagee contained in this section.

(g) *Verification of nonmember mortgagee requirements.* A Bank may, from time to time, require a nonmember mortgagee borrower to provide evidence that such institution continues to satisfy all of the qualifications and requirements contained in this section.

Dated: April 26, 1993.

By the Federal Housing Finance Board.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 93-11306 Filed 5-19-93; 8:45 am]

BILLING CODE 6725-01-M

Testimony of Robert L. Ford

Thursday
May 20, 1993

Part III

Information Security Oversight Office

Hearing; Changes to the Security
Classification System; Notice

INFORMATION SECURITY OVERSIGHT OFFICE**Hearing: Changes to the Security Classification System**

Take notice that on June 9 and 10, 1993, an interagency Task Force chaired by the Information Security Oversight Office (ISOO) will convene to hear oral presentations by interested parties on proposals to change the system under which information is classified, safeguarded, and declassified in the interest of national security. That system is currently embodied in Executive Order 12356, entitled "National Security Information," 47 FR 27836, April 6, 1982.

Background

By Presidential Review Directive, an interagency Task Force chaired by ISOO is responsible for drafting and proposing to the National Security Council no later than November 30, 1993, a security classification system to replace E.O. 12356. The Task Force has been divided into seven Committees to gather input, consider proposals, and recommend changes to be incorporated into the draft order. These Committees are as follows:

Committee on Classification Standards: This Committee is responsible for responding to the following questions: In the post Cold War era, what types of information continue to require protection through classification in the interest of our national security? Do we need three levels of classification?

Committee on Excessive Classification: This Committee is responsible for responding to the following question: What steps can be taken to avoid excessive classification?

Committee on Duration of Classification: This Committee is responsible for responding to the following question: What steps can be taken to declassify information as quickly as possible?

Committee on Declassification: This Committee is responsible for responding to the following question: What steps

can be taken to declassify or otherwise dispose of the large amounts of classified information that currently exist in Government archives or other repositories?

Committee on Access and Dissemination: This Committee is responsible for responding to the following questions: What steps can be taken to control unnecessary distribution and reproduction of classified information? What steps can be taken to enforce the "need-to-know" principle?

Committee on Oversight: This Committee is responsible for responding to the following questions: What steps can be taken to reduce the number of, and to provide adequate oversight and control over, special access programs? What steps can be taken to increase individual accountability for the operation of the classification system? What steps can be taken to improve oversight of the classification program generally?

Committee on Safeguards: This Committee is responsible for responding to the following questions: In what way should the executive order address information systems security? What requirements, restrictions, and other safeguards should be specifically addressed in the executive order taking into account (i) damage from unauthorized disclosures; (ii) existing or anticipated threats; and (iii) the short- and long-term costs of the requirements, restrictions, or other safeguards?

Purpose

To help assure that all organizations and individuals that have an interest in the security classification system have an opportunity to present their views and proposals, the Task Force Committees will convene to receive oral presentations, statements and testimony.

Location

The Great Hall, First Floor, Department of Justice Headquarters Building, Constitution Avenue, between 9th and 10th Streets, Northwest,

Washington, DC. Please enter at middle entrance on Constitution Avenue.

Times

June 9, 1993:

Committee on Classification Standards: 9-10:30 a.m.

Committee on Excessive Classification: 10:30 a.m.-noon.

Committee on Oversight: 1:30-3 p.m.

Committee on Safeguards: 3-4:30 p.m.

June 10, 1993:

Committee on Duration of Classification: 9-10:30 a.m.

Committee on Declassification: 10:30-noon.

Committee on Access and Dissemination: 1:30-3 p.m.

Times are subject to change depending on expressed interest. Parties with appointments will be notified of any changes as soon as possible.

Appointments

Oral presentations will be scheduled by appointment. To reserve an appointment time, please contact June Brown or Dorothy Cephas of ISOO, at (202) 634-6150. Presenters are requested to keep their prepared statements as concise as possible, and to provide specific written proposals for changes to particular provisions of E.O. 12356. The presentations will be open to the public.

Written Proposals

The Task Force will accept and consider written proposals for changes to E.O. 12356. Written proposals should be submitted as early as possible for adequate dissemination and consideration, but no later than July 14, 1993. Please address such proposals to the Information Security Oversight Office, 750 17th Street, NW., suite 530, Washington, DC 20006, Attention: PRD Task Force.

Steven Garfinkel,

Director, Information Security Oversight Office.

[FR Doc. 93-11942 Filed 5-19-93; 8:45 am]

BILLING CODE 6820-AF-M

Federal Register

Thursday
May 20, 1993

Part IV

Department of Transportation

Coast Guard

33 CFR Part 151
Recordkeeping of Refuse Discharges
From Ships; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[CGD 92-71]

RIN 2115-AE17

Recordkeeping of Refuse Discharges From Ships

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to require that all manned, oceangoing U.S. vessels 40 feet or more in length engaged in commerce and all manned fixed or floating platforms keep records of garbage discharges and disposals. Regulations specifying the vessels and platforms required to maintain these records are mandated by statute. The use of shipboard garbage discharge and disposal records would promote compliance, facilitate enforcement, and reduce the amount of plastics discharged into the marine environment.

DATES: Comments must be received on or before July 6, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 92-71), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. Comments on collection of information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection and copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Claudia C. Gelzer, Project Manager, Marine Environmental Protection Division (G-MEP), (202) 267-6714.

SUPPLEMENTARY INFORMATION:**Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking

(CGD 92-71) and the specific section of this proposal to which each comment applies, and give a reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Lieutenant Junior Grade Claudia C. Gelzer, Project Manager, Marine Environmental Protection Division, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Background and Purpose

The Marine Plastic Pollution Research and Control Act of 1987 (the Act) implemented Annex V of MARPOL 73/78. Section 2107 of the Act requires that the Secretary of the Department in which the Coast Guard is operating prescribe regulations which (a) require certain U.S. "ships" (defined in the Act to include fixed or floating platforms, as well as vessels) to maintain refuse record books and (b) specify the ships to which the regulations apply (33 U.S.C. 1903 (b)(2)(A)). Refuse record books would be used to document waste discharges from the ships. These statutory provisions were addressed in a Coast Guard notice of proposed rulemaking (54 FR 37084; September 6, 1989) but the regulatory section, as proposed, failed to receive OMB approval under the Paperwork Reduction Act and was deleted from the interim rule published on May 2, 1990 (55 FR 18578).

Despite implementation of other Coast Guard Annex V regulations to date, large amounts of plastic continue to wash ashore, obstruct navigation, and entangle marine life. Very likely, much

of this plastic was illegally discharged as garbage from ships. According to the Coast Guard's "MARPOL Reception Facility Study," an informal survey of all Annex V reception facilities on the East and Gulf coasts, less than 20 percent of the vessels calling at these ports off-load garbage at a reception facility. Yet, Coast Guard boarding officers frequently find no trace of garbage or incinerated ash on ships that doubtlessly generate large quantities of garbage, such as vessels on long voyages with large crew, or large, permanently-manned platforms. The evidence strongly suggests that, despite current regulations, large amounts of garbage are still being discharged overboard before plastics are separated out for later disposal ashore or incineration aboard.

Though no regulation can stop a crew member intent on violating the regulation from illegally discharging garbage, certain measures can be taken to reduce the number of intentional, as well as negligent, illegal discharges. Under 33 CFR 151.63(a), the master or person in charge of a "ship" is made personally responsible for all discharge or disposal operations. Therefore, a requirement for the master or person in charge to maintain detailed records of each disposal operation should promote knowledge of the discharge regulations and awareness of waste handling practices on the ship, and provide a means of verifying that he or she is carrying out this responsibility. These records would provide a more complete and accurate source of information for boarding officers than would the recollections, over the duration of a voyage, of the master or person in charge. The Coast Guard has already identified the benefits of records by stating in 33 CFR 151.63(b)(2) that log entries indicating discharge operations may be considered by enforcement personnel in evaluating compliance.

Furthermore, the Coast Guard survey on MARPOL Annex V reception facilities states that refuse recordkeeping is critical to strengthening enforcement efforts. It is clear that the present regulations have failed to curtail the growing pollution problem. The waste management plan regulations in 33 CFR 151.57, which, it was hoped, would satisfy the statutory mandate for a refuse record book, have in and of themselves produced inadequate results. It is now believed that, in conjunction with waste management plans, refuse recordkeeping should measurably improve the management of refuse aboard ships. In addition, it would provide research material for evaluating this regulatory program and its effect on

the environment. Coast Guard boarding officers are noting with continued frequency that foreign vessels are maintaining refuse records in order to have documentation of proper discharge procedures.

In addition to this rulemaking, the Coast Guard is pursuing adoption of an international requirement for refuse recordkeeping through the International Maritime Organization (IMO). In this regard, the Coast Guard plans to present an action paper at IMO's Marine Environment Protection Committee meeting in July 1993.

Discussion of Proposed Amendments

This proposal, if adopted, would be inserted in 33 CFR 151.55, which is reserved for recordkeeping requirements. The proposal uses terms that are currently defined in 33 CFR 151.05. Some of the more important definitions are repeated here as an aid to understanding this proposal.

Length means the horizontal distance between the foremost part of a ship's stem to the aftermost part of its stern, excluding fittings and attachments.

Ship means a vessel of any type whatsoever, operating in the marine environment. This includes hydrofoils, air-cushion vehicles, submersibles, floating craft whether self-propelled or not, and fixed or floating drilling rigs and other platforms.

Oceangoing ship means a ship that—

(1) Is operated under the authority of the United States and engages in international voyages;

(2) Is operated under the authority of the United States and is certificated for ocean service;

(3) Is operated under the authority of the United States and is certificated for coastwise service beyond three miles from land;

(4) Is operated under the authority of the United States and operates at any time seaward of the outermost boundary of the territorial sea of the United States as defined in 33 CFR 2.05; or

(5) Is operated under the authority of a country other than the United States.

It should be noted that a Canadian or U.S. ship being operated exclusively on the Great Lakes of North America or their connecting tributary waters or exclusively on the internal waters of the United States and Canada is not an oceangoing ship.

The proposed regulations would apply only to—

(1) Manned oceangoing U.S. ships of 40 feet or more in length that are engaged in commerce and are documented under the laws of the United States or numbered by a State; and

(2) Manned fixed or floating platforms subject to the jurisdiction of the United States.

The proposal is limited to U.S. oceangoing vessels because these are the only vessels operating in the waters beyond 3 nautical miles, where certain garbage can be discharged legally. (Within 3 nautical miles of shore, the discharge of any type of garbage has long been prohibited.) These vessels tend to operate farther from shoreline reception facilities, tend to engage in lengthier voyages which result in the production of more garbage per voyage, and tend to operate in the waters far from shore where illegal discharges are more difficult to detect.

In drafting these proposed rules, the Coast Guard considered the sources and amounts of garbage produced by different categories of "ships", as defined in the Act. The purpose was to determine which ships were generating the largest amounts of trash, particularly plastic, and which would most benefit enforcement efforts by keeping records of their permitted discharge and disposal operations.

The refuse recordkeeping proposal is limited to vessels 40 feet or more in length engaged in commerce. The proposal exempts recreational vessels, but includes the bulk of commercial fishing vessels. While many fishing vessels are in the same size category, they generally sail for longer periods of time and at further distances from shore than do recreational vessels. Fishing vessels carry larger crews than recreational vessels and, therefore, tend to generate more trash. They generate large amounts of operational waste during fishing activities, particularly plastic buckets, synthetic fishing line, and nets that are particularly hazardous to marine life. This kind of operational waste is not normally generated by recreational vessels, which generate trash primarily as a result of food consumption.

The Coast Guard has concluded that a blanket regulation applying to all ships would create a large unnecessary burden on the public. There is less need for recreational vessels to document discharge or disposal operations because they normally do not generate large amounts of garbage and make shorter trips than commercial vessels. In addition, they have greater ability to retain garbage on board until returning to port where they often have access to trash receptacles at the marina.

Commercial oceangoing vessels generally travel beyond 3 nautical miles from shore where they are permitted to discharge certain types of waste. They generate significantly larger amounts of

trash than do recreational vessels and should be held accountable for their waste disposal practices through refuse recordkeeping.

Section 151.55 proposes the use of refuse recordkeeping because the Coast Guard believes that manned U.S. oceangoing ships 40 feet or more in length engaged in commerce are likely to generate and discharge garbage in areas where there is little outside incentive to comply with the regulations concerning the disposal of garbage. Having to record garbage discharge would encourage compliance among vessels in this category and lessen incidence of illegal dumping at sea. Also, applying the regulations to vessels 40 feet or more in length is consistent with 33 CFR 151.57, regulations that require vessels 40 or more in length to develop and follow waste management plans.

The regulations would require the master to maintain a record of the following information: date, time, and location of the discharge; explanation of how garbage was disposed; an estimate of the amount disposed; and a description of the garbage discharged. The regulations would not specify the document or format to be used in recording this information, but would require that the master or person in charge personally certify that the entries are correct.

Each entry should take approximately two minutes to complete. The records would be required to remain on the vessel or platform for two years and to be made available on request by Coast Guard officials.

The citation in 33 CFR 151.63 would be revised to reference the proposed 33 CFR 151.55.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). A draft Regulatory Evaluation is available in the docket for inspection or copying where indicated under "ADDRESSES".

The total annual projected cost to industry of requiring that refuse records be maintained by U.S. manned fixed or floating platforms and certain U.S. vessels is estimated to be \$4.5 million.

The Coast Guard based the implementation costs of these regulations on the following categories of U.S. ships: freight and tank vessels, tug/tow vessels, small fishing vessels (less than 300 gross tons), large fishing vessels (300 gross tons or more), passenger vessels, cruise vessels, vessels engaged in offshore oil and gas

operations, research and other miscellaneous classes of vessels, and manned fixed or floating platforms. The annual cost for a ship to comply with these regulations was calculated by multiplying the time it would take to complete a refuse record entry (two minutes) by the average wage per minute of the deck officer, chief steward, or operator aboard each category of ship by the average number of discharges per year for each category of ship.

The annual cost per ship in each category is estimated to be: Freight or tank vessel: \$804.67; tug/tow vessel: \$301.75; small fishing vessel: \$175.68; large fishing vessel: \$219.46; passenger vessel: \$301.75; cruise vessel: \$2,414.01; offshore oil and mineral vessel: \$332.23; research or other miscellaneous class of vessel: \$158.50; and manned fixed or floating platform: \$48.76.

The estimated numbers of ships affected in each category are: 586 freight and tank vessels, 23 tug/tow vessels, 16,948 small fishing vessels, 224 large fishing vessels, 2,870 passenger vessels, 4 cruise vessels, 276 offshore oil and mineral vessels, 124 research and other miscellaneous classes of vessels, and 1,000 manned fixed or floating platforms.

The total annual cost for each ship category was calculated by multiplying annual cost per ship by estimated number of ships affected in each category: Freight and tank vessels: \$471,536; tug/tow vessels: \$6,940; small fishing vessels: \$2,977,424; large fishing vessels: \$49,159; passenger vessels: \$866,022; cruise vessels: \$9,656; offshore oil and mineral vessels: \$91,695; research and other miscellaneous classes of vessels: \$19,654; and manned fixed or floating platforms: \$48,760.

The average annual burden of this requirement per respondent is estimated to be 7.7 hours. This average was calculated by dividing the total number of hours spent on recordkeeping annually, by the total number of applicable vessels.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard is proposing to adopt the definition of "small business" used by the Small Business Administration when considering loans to concerns engaging in marine transportation (13 CFR 121.2, table 2). Under this definition, a concern is considered "small" if its annual receipts do not exceed \$3.5 million.

The Coast Guard does not have accurate information on how many vessels or manned fixed or floating platforms would qualify as small entities and what the economic impact on them would be. However, because the proposed recordkeeping is expected to require only two minutes per day for smaller vessels and no particular record book or format is prescribed, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic on your business, please submit a comment (see "ADDRESSES") explaining why you think your business qualifies and in what way and to what degree this proposal will economically affect your business.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This proposal contains collection of information requirements in the following section: § 151.55. The following particulars apply:

DOT No.: 2115.

OMB Control No.: 2115-0025.

Administration: U.S. Coast Guard.

Title: Recordkeeping of Refuse

Discharge from Ships.

Need for Information: To allow enforcement officers a means by which to evaluate compliance with Annex V of MARPOL 73/78.

Frequency of Response: Whenever garbage is disposed or discharged.

Burden Estimate: 169,372 annual burden hours.

Respondents: Freight and tank vessels, 586; tug/tow vessels, 23; fishing vessels, 17,172; passenger vessels, 2,870; cruise vessels, 4; offshore oil and mineral vessels, 276; research and miscellaneous vessels, 124; manned fixed and floating platforms, 1,000.

Form(s): No standard form would be required, only specified information.

Average Burden Hours Per Respondent: 7.7 annual burden hours.

The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under "ADDRESSES."

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. The regulations are administrative in nature and are expected to have some positive but no negative impact on the environment. The regulations should contribute to the reduction of the occurrence of plastic, as well as other ship-generated garbage, in the marine environment. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects in 33 CFR Part 151

Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 151 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

1. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C) and 1903(b); E.O. 11735, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46.

2. Section 151.55 is amended by adding text to read as follows:

§ 151.55 Recordkeeping requirements.

(a) This section applies to the following:

(1) Each manned oceangoing ship (other than a fixed or floating platform) of 40 feet or more in length that is

engaged in commerce and that is documented under the laws of the United States or numbered by a State.

(2) Each manned fixed or floating platform subject to the jurisdiction of the United States.

(b) The master or person in charge of each ship under paragraph (a)(1) or (a)(2) of this section shall ensure that a written record is maintained on the ship of each of the following garbage discharge or disposal operations:

- (1) Discharge overboard.
- (2) Discharge to another ship.
- (3) Discharge to a reception facility.
- (4) Incineration on the ship.

(c) The record under paragraph (b) of this section must contain the following information on each discharge or disposal operation:

(1) The type of operation as described under paragraphs (b)(1) through (b)(4) of this section.

(2) The date and time of the operation.

(3) If the operation was conducted at a port, the name of the port.

(4) If the operation was not conducted at a port, the latitude and longitude of the location where the operation was conducted and the distance of that location from shore. If the operation involved offloading to another ship, the identity of the receiving ship.

(5) The amount of garbage involved, described by volume (e.g., the number of bags or dumpsters) or by weight.

(6) The contents of the garbage, described by the following categories:

- (i) Plastic material.
- (ii) Floating dunnage, lining, or packing material.
- (iii) Ground paper, rags, glass, metal, bottles, crockery, or other similar garbage.
- (iv) Unground paper, rags, glass, metal, bottles, crockery, or other similar garbage.
- (v) Ground food wastes.
- (vi) Unground food wastes.
- (vii) Incinerated ash.
- (viii) Incinerated plastic residue.

(d) The record under paragraph (b) of this section must be prepared at the time of the operation, certified as correct by the master or person in charge of the ship, maintained on the ship for two years following the operation, and made available for inspection by the Coast Guard.

3. In § 151.63, paragraph (b)(2) is revised to read as follows:

§ 151.63 Shipboard control of garbage.

* * * * *

(b) * * *

(2) Records under § 151.55 or log entries of garbage discharges.

* * * * *

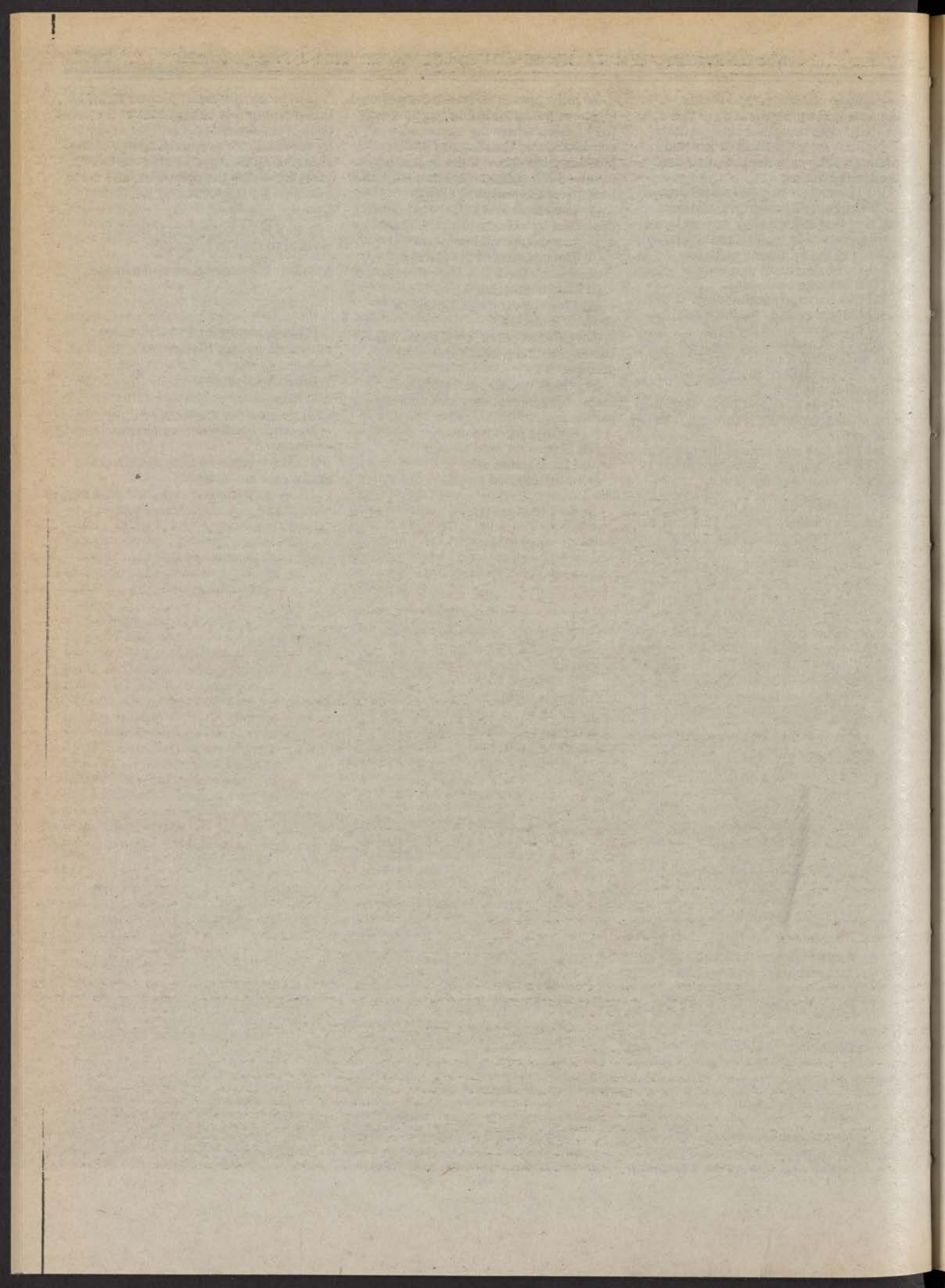
Dated: April 15, 1993.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93-11859 Filed 5-19-93; 8:45 am]

BILLING CODE 4910-14-M



Federal Register

**Thursday
May 20, 1993**

Part V

**Department of
Transportation**

Coast Guard

46 CFR Parts 159 et al.

**Personal Flotation Device Components;
Final Rule**

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 159, 160 and 164

[CGD 84-068]

RIN 2115-AB70

Personal Flotation Device (PFD) Components

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures for obtaining Coast Guard acceptance of non-standard components, requirements for oversight of non-standard components, self-certification requirements for standard components, and production quality control requirements for all components used in the manufacture of Coast Guard-approved personal flotation devices (PFDs). This final rule also prohibits the use of cotton thread as a PFD component, designates specified nylon and polyester threads as standard components, and adds new performance requirements for non-standard thread. The regulations in this final rule relating to standard PFD components and to certain non-standard PFD components, for the most part, represent a codification of longstanding procedures and requirements that are currently applied to those components.

DATES: This rule is effective on November 16, 1993. The Director of the Federal Register approves as of November 16, 1993 the incorporation by reference of certain publications listed in the regulations.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary on file with the Executive Secretary, Marine Safety Council (G-LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street, SW., room 3406, Washington, DC 20593-0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Ensign Jerry Johnson, Office of Marine Safety, Security, and Environmental Protection (G-MVI-3), (202) 267-1444.

SUPPLEMENTARY INFORMATION:**Drafting Information**

The principal persons involved in drafting this document are Ensign Jerry Johnson, Office of Marine Safety, Security, and Environmental Protection and Ms. Helen Boutros, Project Counsel, Office of Chief Counsel.

Regulatory History

On November 13, 1989, the Coast Guard published a notice of proposed rulemaking entitled Personal Flotation Device (PFD) Components in the *Federal Register* (54 FR 47234). The Coast Guard received three letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

Each of the existing PFD subparts in 46 CFR part 160 contains a section or sections containing requirements for the materials (generally referred to as components) used in the construction of the PFD covered by that subpart. Components that comply exactly with all of the requirements of one of these subparts are commonly referred to as standard components. Standard components currently include such items as cotton fabric and webbing, cotton and synthetic threads, and metal closure hardware. Existing regulations in part 160 require component manufacturers to provide affidavits as certification that the components they provide comply with all applicable requirements. The regulations also require PFD manufacturers to retain these affidavits in their records. The existing regulations do not include requirements regarding the contents of the affidavits.

In most cases, standard components must comply with military or Federal specifications which have been incorporated by reference into the regulations and which contain detailed quality control provisions. The quality control requirements in part 160 are geared toward the end product, or PFD, and require periodic visits to the PFD manufacturing plant by marine inspectors or independent laboratory representatives. Periodic inspection of specific PFD components in production is permitted but not required. Because concisely defined standard components were used almost exclusively in PFD manufacture at the time the existing regulations in part 160 became effective, visual inspections of PFD's in production were considered adequate to assure quality control of both components and the end product.

In the ensuing decades, however, many new materials and technologies were developed which demonstrated potential for equivalent or improved performance at similar or lower cost when properly used. Since the 1970's, the Coast Guard has evaluated these materials (such as synthetic fabrics in place of cotton, and plastic buckles in place of metal closure hardware) on an

individual basis for suitability as PFD components. Components demonstrated to be equivalent in performance to standard components are commonly referred to as "non-standard components" and are accepted by the Coast Guard for use in PFDs in lieu of standard components. Non-standard components are now in extensive use.

Individual performance testing of non-standard components, which was established in the 1970's as non-standard components first came into usage, was intended to control and monitor the quality of materials for which there originally was little field service history. Because there was little or no practical experience with entire generic categories of non-standard components (e.g., nylon fabrics), each prospective non-standard component had to be evaluated for equivalence individually rather than based upon known characteristics of a large group of similar products.

Two methods have been in use by the Coast Guard for determining equivalence and accepting non-standard components. These methods are: (1) the Coast Guard "letter of acceptance"; and (2) "component recognition" by a recognized laboratory. Component manufacturers have had the option of which method to use.

Under the existing Coast Guard letter of acceptance program for non-standard components, the component manufacturer submits data directly to the Coast Guard (in the form of test results, samples, etc.) demonstrating that the component meets the appropriate equivalence requirements. The Coast Guard, after reviewing the application, issues the letter of acceptance which establishes the conditions and restrictions under which the component was accepted for use in approved PFD's. Under the existing procedures, a Coast Guard letter of acceptance is valid for a period of five years (the same as for Coast Guard approval of PFD's and other materials and equipment), after which the manufacturer may resubmit performance data and product specifications for a new acceptance. Component manufacturers provide an affidavit with each shipment of standard components that references the letter of acceptance and which certifies that the components shipped meet all of the conditions of the acceptance and all of the applicable performance requirements.

Each letter of acceptance also states that the acceptance is contingent upon the component manufacturer maintaining a quality control program. The existing regulations do not define

specifically the standards which a quality control program must meet. The regulations adopted by this final rule include such standards.

Component recognition by a recognized laboratory, the other existing method of obtaining acceptance as a non-standard component, has been handled directly by the recognized laboratory. Under this method, the component manufacturer submits samples of the prospective non-standard component to the recognized laboratory for testing. The recognized laboratory then prepares a test report and draft procedures for production inspections of the component, which are submitted to the Coast Guard for review. The Coast Guard reviews the report for both adequacy of the test results and accuracy and completeness of the product description in the production inspection procedure. After resolving any discrepancies, the Coast Guard notifies the laboratory in writing that the submission is acceptable if the product is found to meet all of the applicable requirements. The laboratory then tests the product in accordance with its established procedures, and authorizes the product to be marked in production with the "recognition mark" of the laboratory. The recognition mark has been considered adequate evidence that a component met appropriate non-standard component performance requirements, and served the same function as an affidavit under the letter of acceptance program.

The key difference between component recognition and the Coast Guard letter of acceptance program for non-standard components is that under component recognition, the component manufacturer's production quality control program is supplemented by a program of oversight by the recognized laboratory. This quality control oversight program calls for the recognized laboratory to periodically witness or supervise the manufacturer's performance of tests and inspections, audit the manufacturer's quality control records, and select random product samples for follow-up product testing at the laboratory. Other than required product testing to obtain acceptance every five years, the existing Coast Guard letter of acceptance program contains no specific provisions for Coast Guard or independent laboratory oversight over quality control in production.

While the use of non-standard components in PFD's was in the developmental stage, the existing procedures for acceptance functioned generally well. However, the use of non-standard components has now increased

to almost completely replace standard components in the manufacture of PFDs. Experience with certain generic categories of components has grown to the extent that individual testing has become, in many cases, redundant. Many non-standard components are virtually identical, and many generic products have established a sufficient satisfactory field service history that they may now be considered, as classes, to provide a degree of safety equivalent to standard components. The current volume of testing, coupled with the associated administrative efforts involved in processing requests for Coast Guard letters of acceptance, has overloaded the system to create a perpetual backlog of acceptance requests. This backlog often causes lengthy delays in processing new requests. These delays limit the flexibility of PFD manufacturers in selecting component suppliers, which can lead to production delays and additional production costs which are then passed on to the consumer. The staff time required to effectively administer the program has also caused inordinate delays in other activities of interest to the industry, such as approval of PFD's and other equipment. Also, the lack of required oversight in production quality control under the Coast Guard letter of acceptance program for non-standard components led to the use of unsatisfactory components in the production of Coast Guard-approved PFDs. Failure of PFD components creates a serious risk of injuries and fatalities.

New Requirements for Production Quality Control and Quality Control Oversight Requirements

These concerns regarding lack of oversight and inordinate delays are addressed in new subpart 164.019, which is adopted in this final rule. Subpart 164.019 establishes detailed production quality control requirements for all components in conjunction with requirements for quality control oversight of non-standard components by a recognized laboratory (component recognition). Quality control oversight of non-standard components in production by a recognized laboratory is required at the component manufacturer's expense. The presence of an independent oversight organization is intended to ensure an adequate quality control program. For manufacturers, this will mean exerting additional control and oversight over the various facilities involved in the manufacturing process. Therefore, the potential for unsatisfactory non-standard components entering the

market will be significantly reduced. The reduced Coast Guard review time for submissions for component recognition as compared to the time involved in processing letters of acceptance will reduce the backlog of submissions and consequently reduce delays in acceptance of components.

The quality control requirements for standard components and recognized non-standard components adopted by this final rule, principally represent a codification of long standing practice. Standard components and recognized non-standard components have had a generally good record of quality control. Accordingly, these rules, as they pertain to standard components and previously recognized non-standard components, should have little or no impact.

Performance Requirements for Thread

In new subpart 164.023, this final rule establishes performance requirements, acceptance tests, and production testing and inspection requirements for thread used in the construction of PFDs approved under 46 CFR part 160. The existing requirements for thread used in PFDs are contained in 46 CFR 160.001-2(j), which requires that thread for wearable PFDs, depending upon its composition, meet the requirements of one of three Federal specifications. The three acceptable compositions listed in table 160.001-2(j) are cotton, nylon, and polyester. Requirements for thread for securing beackets on commercial ring buoys (throwable PFDs) are contained in 46 CFR 160.050-3(e). That provision requires that the thread meet the requirements of a Federal specification for nylon thread and also allows for other threads of equivalent size and strength.

Cotton thread has been the cause of several reported PFD failures. It is susceptible to deterioration from fungal attack (i.e., mildew). Field reports of equipment failures strongly suggest that cotton thread's vulnerability to environmental elements make it unsuitable for use in PFDs. Due to the nature of the thread's role in a PFD, failure of thread could lead to a total failure of the device in which it is used. For that reason, these rules eliminate cotton thread as an acceptable PFD component in structural applications unless demonstrated to the Commandant to be equivalent to standard thread in durability in all foreseeable conditions of use and stowage. Section 160.001-2(j) is amended by removing the reference to cotton as an acceptable composition and requiring that the thread meet a specification listed in new table 164.023-5(a). Accordingly, table

160.001-2(j), which included cotton thread, is removed.

This restriction on the use of cotton thread will have no impact on the industry since there are presently no PFD manufacturers using cotton thread in construction. Cotton thread is generally not considered to be suitable for use with synthetic fabrics. Therefore, the industry has already converted to the use of synthetic thread.

An analysis of all thread acceptances issued since the inception of the component acceptance program revealed that all accepted threads to date have met the requirements of either a Federal specification or a military specification. In view of the excellent field service history and lack of failures (in either the field or the laboratory) involving these currently non-standard threads, quality control oversight is not considered to be necessary. Accordingly, these rules redesignate as standard components all synthetic threads certified to comply with the specified portions of Federal and military specifications. It is anticipated that there will be few, if any, non-standard threads.

Future Additional Projects

Future proposed rules will address performance requirements for fabric and other PFD components. A separate subpart will be devoted to each component. In this final rule, only the general subpart 46 CFR 164.019, which applies to all components, and 46 CFR 164.023, which deals specifically with thread, are included. It is envisioned that future proposed rules relating to other components will follow closely the structure and format of the thread subpart and will include proposals to adopt performance standards similar to those currently applied to non-standard components under the Coast Guard letter of acceptance program.

Cross Reference to New Regulations

As discussed in the NPRM, some revisions to regulations in title 46, Code of Federal Regulations, are necessary to implement these rules. References to the component acceptance procedures and quality control and certification requirements in new subpart 164.019 are added to the "Materials" section(s) of each of existing subparts 160.001, 160.002, 160.005, 160.047, 160.048, 160.049, 160.050, 160.052, 160.053, 160.055, 160.060, 160.064, 160.077, and 160.076. Former requirements for thread in the "Materials" section(s) of each of existing subparts 160.001, 160.002, 160.005, 160.047, 160.048, 160.049, 160.050, 160.052, 160.053, 160.055, 160.060, 160.064, 160.077, and 160.176

are replaced with references to the requirements in new subpart 164.023.

Discussion of Comments and Changes

Of the three comments received, one comment supported the rule as proposed. Another comment stated that the proposed rule was too restrictive in the sizes outlined in table 164.023-5(A). The comment suggested that the Coast Guard expand the list to include sizes F, FF for the V-T-285 and V-T-295 threads, ticket sizes 20, 16, and 12 for MIL-T-43624A, and ticket sizes 24, 16 and 12 for MIL-T-43548C threads. The Coast Guard has determined that the suggested expansion of allowable thread sizes is appropriate and will allow PFD manufacturers more flexibility in design considerations. Therefore, this suggestion is adopted in this final rule. Table 164.023-5(a) reflects these changes.

The comment also suggested that cotton covered polyester core thread be included as standard components. The Coast Guard's research of PFD records revealed that only one manufacturer has ever requested acceptance of this thread as a non-standard component, and that there is no record of wide usage of this thread in the manufacture of PFDs. Accordingly, cotton covered polyester thread will not be included in the listing of standard components. However, the Coast Guard will, upon individual application, process requests for the use of this thread in Coast Guard-approved PFDs on a case-by-case basis.

The third comment recommended that the Coast Guard delete the requirement for composition testing in § 164.023-13(f)(1) if the Coast Guard intended to require that the test be done on a routine basis. The testing required by § 164.023-13(f)(1) is to be used only to identify the makeup of the thread being tested and is required annually on one sample of each thread. The Coast Guard has determined that this testing is necessary and, since it is required merely annually, it does not represent an undue burden on the industry. Therefore, the comment is not adopted in this final rule.

The third comment also suggested that the standard lot size for thread be raised from 100 pounds to 500 pounds, but provided no rationale for this position. After examination of various Federal and military specifications available for thread, the Coast Guard discovered that, generally, lot sizes are not established for threads. Of all the specifications and standards that are used by thread manufacturers, only appendix D of Underwriters Laboratories (UL) Manufacturer's Follow-up Procedure contains a

reference to lot size, which is established at 100 pounds or less. Because of the need for precise traceability of thread for recall purposes, the Coast Guard has adopted the UL standard for lot sizing of thread. The comment, therefore, is not adopted in this final rule.

The final issue raised by the comment pertains to the requirement in § 164.023-13(f)(2) for quarterly thread breaking strength tests. The comment suggested that this test be required annually rather than quarterly. Because of the critical importance of breaking strength to thread, the Coast Guard considers this test to be essential to the quality of the end product, and has determined that the quarterly test schedule is appropriate. This schedule is consistent with past test procedures for UL inspector follow-up programs. The comment is not, therefore, adopted in this final rule.

The NPRM noted that the Coast Guard would be making revisions to the cross-references within specified regulations of title 46, Code of Federal Regulations. These revisions are necessary due to the addition of the two new subparts in this rulemaking. Several sections of existing subparts were overlooked in the proposed rule but have been included in this final rule. The additional subparts being revised are 160.060, 160.064, and 160.176. Review of existing subparts 160.060, 160.064, and 160.176 revealed that the materials section of these subparts contained reference to the table in § 160.001-2(j) which is superseded by the requirements in new subparts 164.019 and 164.023. Accordingly, these existing subparts are revised to accurately reference the applicable new subparts. Other revisions have been made for clarity and consistency. Several of these revisions are detailed below.

Section 164.019-3 Definitions

The term "Inspector" has been revised to mean a Coast Guard marine inspector or authorized representative of the Coast Guard or a recognized laboratory representative. The term "Use Code" has been expanded to allow more flexibility in identifying components accepted with unique Use Codes assigned by the Commandant (G-MVI-3). This is needed in order to accommodate special or multiple use components or components not covered by present Use Codes, in accordance with § 164.019-7(e). Also, the Use Code of 5H has been added to table 164.019-3 in order to designate the components acceptable for use in Type V Hybrid PFDs.

Section 164.019-4 Component Requirements

The requirements proposed in §§ 164.019-1(d) and 164.019-1(e) have been moved to new § 164.019-4. This represents an organizational change to appropriately separate the description of the scope of subpart 164.019 from regulatory requirements.

Section 164.019-5 Standard Components; Acceptance Criteria and Procedures

The proposed title has been changed, proposed paragraphs have been reorganized and retitled, and several paragraphs have been added so that this section would have a parallel construction to § 164.019-7. This section now provides for a paragraph which states general requirements for standard components. The method of acceptance and the required contents of the affidavit used as documentation of acceptance are now addressed in this section. As with other Coast Guard-approved equipment, the procedures for suspension or termination of acceptance contained in 46 CFR 2.75-40 and 2.75-50 apply to acceptances of PFD components. Accordingly, a reference to these provisions has been added to § 164.019-5.

Section 164.019-7 Nonstandard Components; Acceptance, Criteria and Procedures

This final rule changes the name of this section from "Nonstandard Components" to "Nonstandard Components; acceptance criteria and procedures," which better describes the section. The zipper listed in § 164.019-7(c)(1)(ix), has been deleted as a separate "intended use" item in order to avoid redundancy. The zipper has been more appropriately combined with "Closure and Adjustment Hardware" listed in § 164.019-7(c)(1)(iv). When requesting acceptance for marine fabric, one (1) linear yard is established as the appropriate sample size to be submitted by the manufacturer in accordance with § 164.019-7(c)(4). Paragraph 164.019-7(c)(7) of this section regarding production tolerances has been revised. For clarification, this final rule establishes that dimensional and performance tolerances (as appropriate) must accompany all requests for component acceptance.

Section 164.019-11 Certification (Affidavits)

The NPRM inadvertently included independent laboratories among those required to provide certifying affidavits, which would be contrary to proposed

§ 164.019-5(b). This has been corrected in § 164.019-5(d) of the final rule.

Section 164.019-17 Recognized Laboratory

The requirement to regularly engage in inspection and testing of materials as proposed by § 164.019-17(a)(2) already exists in § 159.010-3(a)(1). Accordingly, the proposed § 164.019-17(a)(2) is deleted and all remaining paragraphs renumbered to avoid redundancy.

Section 164.023-1 Scope

Reference to subpart 164.019 has been added to this section to make it clear that the provisions of this subpart must be applied in combination with subpart 164.019. Also, the requirement that PFD components be used in the construction of PFDs only in accordance with their Use Codes was added to this section. This language is included in this final rule for clarification and should reduce the number of questions about how the regulations are to be applied.

Section 164.023-13 Production Tests and Inspections

The number of samples required to be provided or tested by the manufacturer for several production tests and inspections was listed in the proposed rule as one (1). This final rule clarifies that each sample must consist of at least five (5) specimens (unless otherwise specified in the test procedure), in order to ensure complete, accurate test results. This requirement is not overly burdensome to the industry because it is in accordance with current practice as reflected in many Federal and military standards and Underwriters Laboratories Followup Procedures.

As proposed, the requirements in § 164.023-13(g) dealt with nonstandard components because only nonstandard components have "acceptance testing values". In the final rule, § 164.019-13(m) provides that for standard components, the applicable Federal or military standard "may" be used for the quality control of standard components. To clearly cover production quality control of standard components, reference to § 164.019-13(m) has been added to § 164.023-13(g). Also, the minimum performance level for each tested characteristic has been added to each subparagraph in § 164.023-13(g) to cover standard components when the § 164.019-13(m) procedures are not used. These revisions are in accordance with long-standing policy on component quality control.

Correction of Errors

Review of the proposed rule revealed several spelling, consistency, format,

and typographical errors which have been corrected in this final rule. The affected sections include: §§ 164.019-1, 164.019-5, 164.019-7, 164.019-9, 164.019-11, 164.019-13, and 164.019-15.

Numerical values presented in English units in the proposed rule are presented in metric units in this final rule with the English unit equivalent in parentheses.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 164.023-3 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in that section.

Regulatory Evaluation

These regulations are considered to be nonmajor under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). A final Regulatory Evaluation has been prepared and placed in the rulemaking docket. It may be inspected and copied at the address listed under ADDRESSES. Copies also may be obtained by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

The cost of these rules is estimated to be \$11,500.00 annually for the first five years. This figure represents the cost for five existing manufacturers or converters of nonstandard component fabrics not currently under a quality control oversight program of a recognized laboratory to enter and maintain their products in such a program over that period. Based upon an average 7 million PFDs produced and sold each year, this cost will be reflected in an increase in the cost of an approved PFD of 0.815 cents over the initial five-year period if all added component manufacturer costs are passed on to the PFD manufacturer and then to the consumer. The Coast Guard estimates that continuing costs in subsequent years will be similar.

Thread is the only PFD component other than fabric for which a significant number of nonstandard products not under recognized laboratory quality control oversight are in use. However, because these rules in effect convert all existing nonstandard component threads to standard components, the requirement for quality control oversight for nonstandard components is not expected to result in any increased costs for thread manufacturers.

The Coast Guard expects the production quality control requirements to have little or no impact on

manufacturers of standard components and nonstandard components currently under recognized laboratory quality control oversight. As stated previously, the regulations essentially represent a codification of long-standing procedures and requirements that are currently applied to these components.

These rules are expected to result in a savings to the Coast Guard of an estimated one-half man-year of professional staff effort currently spent in the administration of the non-standard component letter of acceptance program. This will result in a savings of approximately \$30,000.00 annually. The increase in available staff time will also benefit PFD and PFD component manufacturers, because it will expedite the processing of PFD approval and component acceptance submissions, thus reducing the potential for manufacturing and delivery delays due to long waits for Coast Guard review.

The effective conversion of all non-standard component threads currently accepted under Coast Guard letters of acceptance to standard components will result in a savings to the industry of an estimated \$500.00 per product every five years. This figure represents the cost of sending detailed product specifications and performance test results to the Coast Guard for renewal of the letter of acceptance every five years. Based on approximately 25 products currently accepted under letters of acceptance, the total savings to the industry will be \$12,500.00 over a five year period or an average of \$2,500.00 per year.

It is expected that the additional quality control requirements for non-standard components will reduce the incidence of failures of these components currently seen in random performance testing. Although difficult to quantify, the potential for future injuries or fatalities due to failures of components which do not meet the specified minimum performance requirements will therefore be reduced.

An intangible benefit of these rules is that previously unpublished policies and procedures will be made readily available to the public, reducing the likelihood of errors and misinterpretations of existing policy.

Environment

The Coast Guard has considered the environmental impact of this final rule and it has been determined to be categorically excluded from further environmental documentation in accordance with sections 2.B.2.c. and 2.B.2.1 of Commandant Instruction (COMDTINST) M16475.1B. A Categorical Exclusion Determination

statement has been prepared and is included as part of the regulatory package. This final rule establishes acceptance procedures and quality control oversight and clearly will have no impact on the environment.

Federalism

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The authority to establish standards for the approval of lifesaving equipment to be carried on board vessels has been committed to the Coast Guard by Federal statutes. Further, PFDs are distributed in a national marketplace and divergent requirements regarding their manufacture would lead to confusion, added expense, and reduced safety. Therefore, the Coast Guard intends to preempt state and local regulations on the same subject matter that are inconsistent with this final rule.

Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard has considered whether these regulations will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses which are not dominant in their field and which would otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

There are an estimated five fabric manufacturers or converters who will be required to obtain component recognition for PFD component fabric under these rules. The added cost per manufacturer will be an estimated \$11,435.00 over the initial five year period, or \$2,287.00 per year. Based upon the quantity of fabric produced, this cost will represent less than one tenth of one percent of gross revenues for PFD component fabric. It is likely that this cost will be partially or entirely passed on to the PFD manufacturer and ultimately the PFD buyer. In view of these considerations, and the fact that PFD component fabric generally represents only a small portion of a fabric manufacturer's business, the impact on these manufacturers is considered to be minor.

Based upon these estimates, the impact of these regulations on small entities is considered to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory

Flexibility Act (5 U.S.C. 601 *et seq.*) that these regulations will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rulemaking contains information collection and recordkeeping requirements. The Coast Guard has submitted these requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. The section numbers are: §§ 164.019-5, 164.019-7, 164.019-9, 164.019-13, 164.019-15, and 164.023-15 and the corresponding OMB number is 2115-0141.

OMB Control Numbers for regulations within certain parts of title 46, Code of Federal Regulations are displayed in a table appearing at 46 CFR 159.001-9. This final rule updates that table to display the assigned OMB Control Numbers for the regulations noted.

List of Subjects

46 CFR Part 159

Business and Industry, Laboratories, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 160

Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 164

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Incorporation by reference.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR parts 159, 160 and 164 as follows:

PART 159—APPROVAL OF EQUIPMENT AND MATERIALS

1. The authority citation for part 159 continues to read as follows:

Authority: 46 U.S.C. 3308, 3703; 49 CFR 1.45, 1.46; section 159.001-9 also issued under the authority of 44 U.S.C. 3507.

2. In § 159.001-9, paragraph (b) is amended by adding the following new entries in numerical order to read as follows:

§ 159.001-9 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

(b) Display.	
§ 164.019-5	2115-0141
§ 164.019-7	2115-0141
§ 164.019-9	2115-0141
§ 164.019-13	2115-0141

§ 164.019-15 2115-0141
 § 164.023-15 2115-0141

PART 160—LIFESAVING EQUIPMENT

3. The authority citation for part 160 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4104, and 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 160.001-1 [Amended]

4. In § 160.001-1(a)(1), remove the words "V-T-276H-Thread, Cotton."

5. In § 160.001-2, table 160.001-2(j)-THREAD is removed and paragraphs (a) and (j) are revised to read as follows:

§ 160.001-2 General characteristics of life preservers.

(a) A life preserver must be of such construction, material and workmanship that it can perform its intended function in all weathers and at all temperatures which may be expected in the normal usage of the life preserver. All components used in the construction of a life preserver must meet the applicable requirements of subpart 164.019 of the chapter.

(j) Each thread in a life preserver regulated under subparts 160.002, 160.005 and 160.055 of this part must meet the requirements of a Federal or military specification in table 164.023-5(a) of this chapter. Only one kind of thread may be used in each seam.

6. In § 160.002-3, introductory text is added and paragraph (i) is revised to read as follows:

§ 160.002-3 Materials.

All components used in the construction of the life preserver must meet the applicable requirements of subpart 164.019 of this chapter and the following requirements apply to individual components:

(i) *Thread.* Each thread must meet the requirements of subpart 164.023 of this chapter. Only one kind of thread may be used in each seam.

7. In § 160.005-3, introductory text is added and paragraph (i) is revised to read as follows:

§ 160.005-3 Materials.

All components used in the construction of a life preserver must meet the applicable requirements of subpart 164.019 of this chapter and the following requirements apply to individual components:

(i) *Thread.* Each thread must meet the requirements of subpart 164.023 of this

chapter. Only one kind of thread may be used in each seam.

8. In § 160.047-3, paragraphs (a) and (h) are revised to read as follows:

§ 160.047-3 Materials.

(a) *General.* All components used in the construction of buoyant vests must meet the applicable requirements of subpart 164.019 of this chapter. The requirements for materials specified in this section are minimum requirements, and consideration will be given to the use of alternate materials in lieu of those specified. Detailed technical data and samples of all proposed alternate materials must be submitted for approval before those materials are incorporated in the finished product.

(h) *Thread.* Each thread must meet the requirements of subpart 164.023 of this chapter. Only one kind of thread may be used in each seam.

9. In § 160.048-3, paragraph (a) and (g) are revised to read as follows:

§ 160.048-3 Materials.

(a) *General.* All components used in the construction of buoyant cushions must meet the applicable requirements of subpart 164.019 of this chapter.

(g) *Thread.* Each thread must meet the requirements of subpart 164.023 of this chapter. Only one kind of thread may be used in each seam.

10. In § 160.049-3, paragraph (a) and (e) are revised to read as follows:

§ 160.049-3 Materials.

(a) *General.* All components used in the construction of buoyant cushions must meet the applicable requirements of subpart 164.019.

(e) *Thread.* Each thread must meet the requirements of subpart 164.023 of this chapter. Only one kind of thread may be used in each seam.

11. In § 160.050-3, Paragraph (a) and (e) are revised to read as follows:

§ 160.050-3 Materials.

(a) *General.* All exposed materials must be resistant to oil or oil products, salt water and anticipated weather conditions encountered at sea. All components used in construction of buoys and life rings must meet the applicable requirements of subpart 164.019 of this chapter.

(e) *Thread.* Each thread must meet the requirements of subpart 164.023 of this

chapter. Only one kind of thread may be used in each seam.

12. In § 160.052-3 paragraphs (a) and (f) are revised to read as follows:

§ 160.052-3 Materials—standard vests.

(a) *General.* All components used in the construction of buoyant vests must meet the applicable requirements of subpart 164.019 of this chapter. The requirements for materials specified in this section are minimum requirements, and consideration will be given to the use of alternate materials in lieu of those specified. Detailed technical data and samples of all proposed alternate materials shall be submitted for approval before those materials are incorporated in the finished product.

(f) *Thread.* Each thread must meet the requirements of subpart 164.023 of this chapter. Only one kind of thread may be used in each seam.

13. In § 160.053-3, paragraph (a) is revised and paragraph (d) is added to read as follows:

§ 160.053-3 Materials, construction, and workmanship.

(a) *General.* Except as otherwise specifically provided by this subpart and subparts 164.019 and 164.023 of this chapter, the materials, construction, and workmanship of unicellular plastic foam work vests specified by this subpart shall conform to the requirements of Military Specification MIL-L-17653A.

(d) *Materials; acceptance and quality.* All components used in the construction of work vests must meet the applicable requirements of subpart 164.019 of this chapter.

14. In § 160.055-3, paragraphs (a) and (d) are revised to read as follows:

§ 160.055-3 Materials—standard life preservers.

(a) *General.* All components used in the construction of life preservers must meet the applicable requirements of subpart 164.019 of this chapter. The requirements for materials specified in this section are minimum requirements, and consideration will be given to the use of alternate materials in lieu of those specified. Detailed technical data and samples of all proposed alternate materials must be submitted for approval before those materials are incorporated in the finished product.

(d) *Thread.* Each thread must meet the requirements of subpart 164.023 of this chapter. Only one kind of thread may be used in each seam.

15. In § 160.060-3, paragraphs (a) and (f) are revised to read as follows:

§ 160.060-3 Materials—standard vests.

(a) *General.* All components used in the construction of buoyant vests must meet the applicable requirements of subpart 164.019 of this chapter. The requirements for materials specified in this section are minimum requirements, and consideration will be given to the use of alternate materials in lieu of those specified. Detailed technical data and samples of all proposed alternate materials must be submitted for approval before those materials are incorporated in the finished product.

(f) *Thread.* Each thread must meet the requirements of subpart 164.023 of this chapter. Only one kind of thread may be used in each seam.

§ 160.064-3 [Amended]

16. In § 160.064-3 paragraph (c) is amended by adding the words "must meet the applicable requirements of subpart 164.019 of this chapter and" after the word "subpart" in the first sentence, and replacing the words "webbing, and thread" in the fourth sentence with the words "and webbing".

17. In § 160.077-11, paragraphs (a)(3), (a)(4) and (e) are revised to read as follows:

§ 160.077-11 Materials—recreational hybrid PFDs.

(a) * * *

(3) *Acceptance, certification, and quality.* All components used in the construction of hybrid PFDs must meet the applicable requirements of subpart 164.019 of this chapter.

(4) *Temperature range.* Unless otherwise specified in standards incorporated by reference in this section, all materials must be designed for use in all weather conditions throughout a temperature range of -30 °C to +65 °C (-22 °F to +150 °F).

(e) *Thread.* Each thread must meet the requirements of subpart 164.023 of this chapter. Only one kind of thread may be used in each seam. Thread and fabric combinations must have similar elongation and durability characteristics.

18. In § 160.176-8, paragraphs (a)(1) and (d) are revised to read as follows:

§ 160.176-8 Materials.

(a) *General—(1) Acceptance, certification, and quality.* All components used in the construction of

lifejackets must meet the requirements of subpart 164.019 of this chapter.

(d) *Thread.* Each thread must meet the requirements of subpart 164.023 of this chapter. Only one kind of thread may be used in each seam. Thread and fabric combinations must have similar elongation and durability characteristics.

PART 164—MATERIALS

19. The authority section for part 164 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

20. Subpart 164.019, consisting of §§ 164.019-1 through 164.019-17, is added to read as follows:

Subpart 164.019—Personal Flotation Device Components

- Sec.
- 164.019-1 Scope.
- 164.019-3 Definitions.
- 164.019-4 Component requirements.
- 164.019-5 Standard components; acceptance criteria and procedures.
- 164.019-7 Non-standard components; acceptance criteria and procedures.
- 164.019-9 Procedure for acceptance of revisions of design, process, or materials.
- 164.019-11 Certification (affidavits).
- 164.019-13 Production quality control requirements.
- 164.019-15 Component manufacturer records.
- 164.019-17 Recognized laboratory.

Subpart 164.019—Personal Flotation Device Components

§ 164.019-1 Scope.

(a) This subpart contains general requirements for standard personal flotation device (PFD) components, procedures for acceptance of non-standard PFD components, and production quality control requirements for all PFD components, used in the construction of PFDs approved under part 160 of this subchapter.

(b) Other subparts of this part contain specific requirements applicable to particular PFD components used in the construction of Coast Guard-approved PFDs.

(c) Part 160 of this chapter contains specific requirements and limitations concerning the use of PFD components in the construction of particular Coast Guard-approved PFDs.

§ 164.019-3 Definitions.

Acceptance means certification by the Coast Guard that a component is suitable for use in the manufacture of Coast Guard-approved PFDs.

Commandant means the Chief of the Survival Systems Branch, Office of Marine Safety, Security, and Environmental Protection, U.S. Coast Guard. Address: Commandant (G-MVI-3/14), U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593-0001. Telephone: 202-267-1444

Component manufacturer means either a component manufacturer or supplier seeking acceptance of a component, or a component manufacturer or supplier who has obtained acceptance of a component.

Inspector means a Coast Guard marine inspector, authorized representative of the Coast Guard, or a recognized laboratory representative.

Non-standard component means a PFD component which is equivalent in performance to a standard component.

PFD Type means the performance type designation as indicated in 33 CFR part 175 and this subchapter.

Standard component means a PFD component which complies in all respects with the material, construction, and performance requirements of a subpart of this part or part 160 of this chapter.

Use Code means an alphanumeric code assigned by the Commandant (G-MVI-3) to a PFD component to designate the PFD Type(s) in which it may be used. Assigned Use Codes are listed in table 164.019-3.

TABLE 164.019-3

Use code	PFD type acceptable for use
1	I, II, and III.
2	II and III.
3	III.
4B	IV (all Ring Buoys).
4BC	IV (Buoyant Cushions).
4RB	IV (Recreational Ring Buoys only).
5	Wearable Type V (Intended use must be specified).
5H	V (Hybrid).
5R	V (Recreational Style).
5SB	V (Sailboard vests).
5WV	V (Work vests).
6	Special, limited, or restricted use.
Suffix A ..	Adult only.
Suffix C ..	Child only.

§ 164.019-4 Component requirements.

(a) PFDs may be constructed only with Coast Guard-accepted PFD components meeting the requirements of this subchapter.

(b) PFD components may be used in the construction of PFDs only in accordance with their Use Codes.

§ 164.019-5 Standard components; acceptance criteria and procedures.

(a) *General.* Standard components used in the construction of PFDs must

meet the applicable requirements of this part or part 160 and the documentation requirements of this section.

(b) *Use Codes.* Each standard component is assigned a Use Code as indicated in table 164.019-3. Additional Use Codes may be assigned by the Commandant.

(c) *Method and documentation of acceptance.* Except as provided in paragraph (d) of this section, the following requirements pertaining to the shipment of standard components must be met in order for the standard components to be considered Coast Guard-accepted standard components:

(1) Each shipment of standard components must be accompanied by an affidavit complying with § 164.019-11.

(2) A sample affidavit, or a copy of the affidavit, provided with the first shipment of standard components to a PFD manufacturer, must be provided to the Commandant.

(3) A revised sample affidavit, or a copy of the revised affidavit, must be provided to the Coast Guard any time the information on the affidavit accompanying a shipment of standard components materially changes.

(d) *Exception.* Affidavits are not required to be provided for standard components that are under the quality control oversight program of a recognized laboratory meeting the requirements of § 164.019-17.

(e) *Suspension or termination of acceptance.* The procedures in §§ 2.75-40 and 2.75-50 of this chapter for suspension and termination of approvals also apply to Coast Guard acceptances of PFD components.

§ 164.019-7 Non-standard components; acceptance criteria and procedures.

(a) *General.* Non-standard components may be used in the construction of PFDs only if they have been accepted by the Coast Guard in accordance with the requirements of this section.

(b) *Use Codes.* Each non-standard component is assigned a Use Code as indicated in table 164.019-3. Additional Use Codes may be assigned by the Commandant.

(c) *Request for acceptance.* The component manufacturer or the recognized laboratory that performs the acceptance testing required by the applicable subpart of this part or part 160 of this chapter must submit, in writing, to the Commandant, a request for acceptance of any non-standard component. The request must include the information, supporting documentation, and samples required by this section.

(1) The request must include a statement of the intended use of the component by the PFD manufacturer, and the Use Code(s) for which acceptance is requested. Intended uses must be for one or more of the following—

- (i) Outer Envelope Fabric (exterior fabrics on wearable PFDs);
- (ii) Cover Fabric (for throwable PFDs);
- (iii) Inner Envelope Fabric;
- (iv) Closure (including zippers) or Adjustment Hardware;
- (v) Body Strap;
- (vi) Grab Strap (applies to buoyant cushions only);
- (vii) Tie Tape;
- (viii) Reinforcing Tape;
- (ix) Thread;
- (x) Flotation Foam; or
- (xi) Other (specify).

(2) The request must include a statement identifying the component in detail and including the unique style, part, or model number, the identification data required by the applicable subpart of this part, and any other manufacturer's identifying data. No two components which differ in any way, e.g., size, material composition, construction, may utilize the same identification number.

(3) The report of a recognized laboratory's test data in accordance with the "acceptance tests" required by the applicable subpart of this part or part 160 must be submitted with the request. Each report must include the name of the laboratory and a description of the test equipment and test methods used, and must be signed and dated by an authorized laboratory official.

(4) A sample of each component that is being considered must be submitted with the request. Where the lightest and darkest colors are being tested, samples of both colors must be submitted. A one linear yard sample is required in the case of textiles.

(5) The request must include a list of all materials used in the construction of the particular component. The list must contain specific identification and quantity of all materials used.

(6) For hardware and other mechanical components, the request must include scaled drawings showing details and dimensions of the mechanism.

(7) A statement of dimensional and performance tolerances, as appropriate, that will be maintained in production must be submitted with request.

(8) The request must include a description of the quality control procedures that will be in effect during production.

(9) The request must include a detailed description of the recognized

laboratory's procedures for oversight of the manufacturer's program of production quality control, including a description of the laboratory's certification marking(s).

(10) The request must include any appropriate installation or use guidelines for the component.

(d) *Documentation of acceptance.* When an acceptance is granted, the Commandant provides written notice to the applicant.

(e) *Alternate requirements.* When an acceptance is granted, the Commandant provides written notice to the applicant.

(1) Meets other requirements prescribed by the Commandant in lieu of or in addition to the requirements of this subpart; and

(2) Provides at least the same degree of safety as provided by a component that does comply with this subpart.

(f) *Additional tests and documentation.* The Commandant may prescribe additional tests or request additional documentation, if necessary, to determine the acceptability or suitability of a particular product.

(g) *Suspension or termination of acceptance.* The producers in §§ 2.75-40 and 2.75-50 of this chapter for suspension and termination of approvals also apply to Coast Guard acceptances of PFD components.

§ 164.019-9 Procedure for acceptance of revisions of design, process, or materials.

(a) The manufacturer shall not change the design, material, manufacturing process, or construction of a non-standard component unless it has been previously approved by the Commandant, in accordance with paragraph (b) of this section.

(b) The manufacturer or the recognized laboratory that performs the acceptance testing required by the applicable subpart of this part or part 160 of this chapter shall submit requests for acceptance of revisions in design, material, manufacturing process, or construction of a non-standard component in writing and describe the revision in detail similar to the original request for acceptance.

§ 164.019-11 Certification (affidavits).

General. Affidavits required by § 164.019-5(c) must be notarized, and certify that a component complies in all respects with the material and construction requirements of a subpart of this part or part 160 of this chapter. Each affidavit must contain the following information:

- (a) Name and address of company.
- (b) Name and title of signing company official.
- (c) Description of the component by use of the unique style, part, or model

number and other applicable distinctive characteristics such as weight, size, denier, treatments or coatings, etc.

(d) Production data (to include lot, batch number, and quantity shipped) in sufficient detail to enable the manufacturer or purchaser to trace a shipment of components back to the lots of raw materials used in its manufacture.

(e) The intended use of the component, from the list in § 164.019-7(c)(1).

(f) The PFD Type(s) for which the component is a standard component, as determined by—

(1) The standard material component requirements of part 160 of this chapter with which the component complies; or

(2) The Use Code(s) of the component.

(g) A statement indicating the specific provision(s) of this subchapter with which the component complies.

(h) A copy of the records of all required production tests performed on the component lots that are covered by the affidavit.

§ 164.019-13 Production quality control requirements.

(a) *General.* Each component manufacturer shall establish procedures for maintaining quality control of the materials used in production, manufacturing operations, and the finished product.

(b) *Recognized laboratory oversight.* Each manufacturer on non-standard components shall supplement its procedures for assuring production quality control with a program of oversight by a recognized laboratory, as described in the oversight procedures submitted to the Coast Guard in accordance with § 164.019-7(c)(9). The laboratory's oversight program must be performed at the place of manufacture unless alternate procedures have been accepted by the Commandant.

(c) *Production tests and inspections.* Production tests and inspections must be conducted in accordance with this section and subpart 159.007 of this chapter.

(d) *Responsibilities; component manufacturers.* Each component manufacturer shall—

(1) Perform all production tests and inspections required by the applicable subpart of this part;

(2) Adhere to the accepted quality control procedures for the component as submitted to the Coast Guard in accordance with § 164.019-7(c)(8); and

(3) Establish a continuing program of employee training and a program for maintaining production and test equipment.

(e) *Responsibilities; recognized laboratories.* The same recognized

laboratory that performed the acceptance testing shall, at least quarterly, or more frequently if required by the applicable subpart of this part or by the oversight procedures submitted in accordance with § 164.019-7(c)(9)—

(1) Audit the component manufacturer's records required by § 164.019-15;

(2) Perform, or supervise the performance of, the tests required by this section, the applicable subpart of this part, and the accepted quality control and oversight procedures; and

(3) Verify, during each inspection, compliance by the manufacturer with the manufacturer's established quality control program and provide a summary report of any noncompliance to the Commandant at least annually.

(f) *Component lots.*

(1) *Lot numbers.* The manufacturer shall assign a lot number to each group of components manufactured. A new lot must be started whenever any change is made in materials, design, or production method, and whenever any substantial discontinuity in the manufacturing process (such as a change in shift) occurs. Changes in lots of incoming materials must be treated as changes in materials. Lots must be numbered serially. The lot number assigned, in combination with the unique product name or identification, must enable the component manufacturer (or supplier), by referring to the records required by this subpart, to determine the source(s) of all raw materials used in that lot.

(2) *Lot size.* The maximum lot size for any particular component must be as defined in the applicable subpart of this part.

(g) *Samples.* (1) Procedures for selection of test samples, and required sample sizes, must be in accordance with the applicable subpart of this part.

(2) The inspector shall select different samples than were tested by the manufacturer.

(h) *Detailed product examination.*—

(1) *General.* In addition to the tests and inspections required by the applicable subpart of this part, the manufacturer or the inspector shall examine each sample component to determine that—

(i) The construction, markings, and workmanship conform to the information submitted in the request for acceptance; and

(ii) The component is not otherwise defective.

(2) *Inspection responsibility.* The manufacturer shall ensure that the inspection required by paragraph (h)(1) of this section is performed by a manufacturer's representative familiar with the performance requirements for the component, and all of the

production quality control requirements. The manufacturer's representative must not be responsible for meeting production schedules, or be subject to supervision by someone responsible for meeting production schedules.

(i) *Reserved.*

(j) *Accept/reject criteria.* (1) A component lot passes production testing and is therefore accepted if each sample tested passes each test.

(2) A lot having a production test failure may be accepted if it meets the following additional test requirements.

(i) When the basis of acceptability is an average result, a second sampling with an identical number of samples is taken. The results of this second sampling must be averaged with the initial results. If the average result passes the test, then the lot may be accepted.

(ii) When the basis of acceptability is individual sample results, a second sampling is taken. The size of the second sampling must be as specified in the subpart of this part which covers the component. If each sample in this sampling passes the test, the lot may be accepted.

(3) A rejected lot of components may be resubmitted for testing, examination, or inspection if—

(i) The manufacturer first removes each component having the same type of defect or;

(ii) After obtaining authorization from the Commandant or the recognized laboratory, the manufacturer reworks the lot to correct the defect.

(4) A rejected lot or rejected component may not be sold or offered for sale with the representation that it meets the requirements of this subpart or is accepted by the Coast Guard, and may not be used in the construction of Coast Guard-approved PFDs.

(k) *Facilities and equipment.*—(1) *General.* The manufacturer shall provide the test equipment and facilities for performing production tests, examinations, and inspections described in the applicable subpart of this part and in the quality control and oversight procedures submitted in accordance with § 164.019-7(c) (8) and (9).

(2) *Calibration.* The manufacturer shall have the calibration of all test equipment checked at least every 6 months by a weights and measures agency or by the equipment manufacturer, distributor, or dealer.

(3) *Facilities for inspector's use.* The manufacturer shall provide a suitable place and the necessary apparatus for the inspector to use in conducting or supervising tests. For the detailed

product examination, the manufacturer shall provide a suitable working environment and a smooth-top table for the inspector's use.

(4) *Access to facilities.* The manufacturer shall permit the inspector to have access to any place in the factory where work is being done on PFD components or where components are stored. The inspector may take samples of parts or materials entering into production or completed components, for further examinations, inspections, or tests.

(l) Reserved.

(m) *Alternate procedures for standard components.* In lieu of the quality control procedures specified in this section, manufacturers of standard components may follow the quality control procedures in a Federal or military specification with which the component is required to comply by this subchapter, or equivalent procedures accepted by the Commandant.

(n) *Additional tests.* The Commandant may prescribe additional production tests and inspections to maintain quality control. A representative of the Commandant may conduct inspections for compliance with the requirements of this subpart.

§ 164.019-15 Component manufacturer records.

(a) Each component manufacturer shall retain records as required by § 159.007-13 of this chapter.

(b) The records required by paragraph (a) of this section must include the following information:

(1) For each test, the serial number of the test instrument used if there is more than one available.

(2) For each test and inspection, the identification of the samples used, the lot number, the unique component identification, and the quantity of the component in the lot.

(3) The cause for rejection, any corrective action taken, and the final disposition of each lot rejected.

(c) Manufacturers utilizing procedures and apparatus meeting the requirements of the applicable subpart of this part or the independent laboratory's accepted follow-up inspection procedures are not required to include the description of procedures or photographs or apparatus required by § 159.007-13 of this chapter in the manufacturers' records.

(d) In addition to the records required by paragraphs (a) and (b) of this section, each component manufacturer shall retain the following:

(1) Records for all materials used in production, including name and address of the supplier, date of purchase and receipt, and lot number.

(2) A copy of this subpart, and other subparts applicable to the component manufactured.

(3) Each document incorporated by reference in the applicable subpart(s) of this part.

(4) A copy of the accepted component specifications and identifying data.

(5) Records of calibration of all test equipment, including the identity of the agency performing the calibration, date of calibration, and results.

(e) Manufacturers shall retain the records required by paragraph (d)(1) of this section for at least 60 months.

(f) Upon request, manufacturers shall make available to the inspector or to the Commandant records of tests conducted by the manufacturer and records of materials entering into construction, including affidavits by suppliers certifying that applicable requirements are met.

§ 164.019-17 Recognized laboratory.

(a) *General.* A laboratory may be designated as a recognized laboratory under this subpart if it is—

(1) Accepted by the Coast Guard as an independent laboratory under subpart 159.010 of this subchapter; and

(2) Established in the inspection of factory production, listing, and labeling, by having an existing program and standards for evaluation, listing, and marking components, that are acceptable to the Commandant.

(b) *Designated recognized laboratories.* A current listing of recognized laboratories is available from the Commandant upon request.

21. Subpart 164.023, consisting of §§ 164.023-1 through 164.023-15, is added to read as follows:

Subpart 164.023—Thread for Personal Flotation Devices

Sec.

164.023-1 Scope.

164.023-3 Specifications and standards incorporated by reference.

164.023-5 Performance; standard thread.

164.023-7 Performance; non-standard thread.

164.023-9 Samples submitted for acceptance.

164.023-11 Acceptance tests.

164.023-13 Production tests and inspections.

164.023-15 Marking.

Subpart 164.023—Thread for Personal Flotation Devices

§ 164.023-1 Scope.

This subpart contains performance requirements, acceptance tests, and production testing and inspection requirements for thread used in the construction of personal flotation devices (PFDs) approved under part 160

of this subchapter. Manufacturers must also comply with the requirements of subpart 164.019 of this chapter.

§ 164.023-3 Specifications and standards incorporated by reference.

(a) Certain materials are incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the Federal Register and the material made available to the public. All approved material may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC and at the U.S. Coast Guard, Survival Systems Branch (G-MVI-3), Washington, DC 20593-0001, and is available from the source indicated in paragraph (c) of this section.

(b) The materials approved for incorporation by reference in this subpart, and the sections affected are:

Federal Standards and Test Method Standards

The following test methods in Federal Test Method Standard No. 191A, Textile Test Methods, July 20, 1978:

(1) Method 4010, Length-Weight Relation; Thread; Yards Per Pound (m/kg)—164.023-11.

(2) Method 4100, Strength and Elongation, Breaking; and Tenacity; of Thread and Yarn; Single Strand—164.023-7.

(3) Method 5804, Weathering Resistance of Cloth; Accelerated Weathering Method—164.023-7.

Federal Specifications

(4) V-T-285E—Thread, Polyester, August 21, 1986—164.023-5.

(5) V-T-295E—Thread, Nylon, August 1, 1985—164.023-5.

Military Specifications

(6) MIL-T-43548C—Thread, Polyester Core; Cotton-, Rayon-, or Polyester-Covered, September 30, 1986—164.023-5.

(7) MIL-T-43624A—Thread, Polyester, Spun, January 22, 1982—164.023-5.

(c) All reference materials are available from the Naval Publications and Forms Center, Customer Service, Code 1052, 5801 Tabor Ave., Philadelphia, PA 19120.

§ 164.023-5 Performance; standard thread.

(a) *Use Codes 1, 2, 3, 4BC, 4RB, 5 (any).* Each thread which complies with all of the requirements of a specification

listed in table 164.023-5(a) is assigned Use Codes 1, 2, 3, 4BC, 4RB, and 5 (any).

TABLE 164.023-5(a)
[Use codes 1, 2, 3, 4BC, 4RB, 5(any)]

Federal or military specification	Material	Type	Class	Ticket No. or size range
V-T-285E	Polyester	I or II	1	E, F, FF.
V-T-295E	Nylon	I or II	A	E, F, FF.
MIL-T-43624A	Polyester .....	.....	.....	24 through 12.
MIL-T-43548C	Polyester covered only .....	.....	.....	24 through 12.

(b) *Use Code 4B.* Each thread which meets the requirements of Federal Specifications V-T-295, Type II, Class A, number size 4, is assigned Use Code 4B.

§ 164.023-7 Performance; non-standard thread.

(a) *Use Codes 1, 2, 3, 4BC, 4RB, 5 (any).* Each non-standard thread which meets all of the requirements of paragraphs (a)(1) through (a)(3) of this section is assigned Use Codes 1, 2, 3, 4BC, 4RB, and 5 (any).

(1) *Single strand breaking strength.* The thread, as received, must have a single strand breaking strength of not less than 25 N (5.7 lb.), when tested in accordance with Test Method 4100 in Federal Test Method Standard No. 191A using a Constant-Rate-of-Traverse (CRT) testing machine.

(2) *Single strand breaking strength (after weathering).* After exposure in a sunshine carbon-arc weatherometer in accordance with Test Method 5804 in Federal Test Method Standard No. 191A for a period of 100 hours, the thread must retain at least 60 percent of its single strand breaking strength as received, and have a breaking strength of at least 21 N (4.7 lb.).

(3) *Loop breaking strength.* The thread, as received, must have a loop breaking strength of not less than 45 N (10.0 lb.), when tested in accordance with Test Method 4100 in Federal Test Method Standard No. 191A using a CRT testing machine, except that—

(i) Each specimen must consist of two 35 cm (14 in.) pieces of thread; and

(ii) Both ends of one piece of thread must be secured without twisting in one clamp of the testing machine so that the length of the loop formed equals one half the distance between the clamps. One end of the second piece must then be passed without twisting through the loop formed by the first, and both ends must be secured in the other clamp of the machine. The breaking strength must then be determined under the single strand test.

(b) *Use Code 4B.* Each non-standard thread which meets all of the requirements of paragraphs (b)(1) and (b)(2) of this section is assigned Use Code 4B.

(1) *Single strand breaking strength.* The thread as received must have a single strand breaking strength of not less than 160 N (36.0 lb.) when tested in accordance with Test Method 4100 in Federal Test Method Standard No. 191A using a CRT testing machine.

(2) *Single strand breaking strength (after weathering).* After exposure in a sunshine carbon-arc weatherometer in accordance with Test Method 5804 in Federal Test Method Standard No. 191A for a period of 100 hours, the thread must retain at least 60 percent of its single strand breaking strength.

(c) *Prohibited threads.* Cotton thread, and monofilament thread of any composition, will not be accepted for use in structural applications unless demonstrated to the Commandant to be equivalent to standard thread in durability in all foreseeable conditions of use and stowage.

§ 164.023-9 Samples submitted for acceptance.

Application samples. A product sample submitted for acceptance as required by § 164.019-7(c)(4) must consist of at least one unit of put-up of thread.

§ 164.023-11 Acceptance tests.

(a) *Performance testing.* Manufacturers shall ensure that the performance tests described in § 164.023-7 (a) or (b), as appropriate, are performed on a minimum of five samples in each of the lightest and darkest colors submitted for acceptance.

(b) *Identification testing.* Manufacturers shall ensure that the following identification tests are conducted:

(1) The average length/weight ratio of the thread in meters per kilogram (yards per pound) must be determined in

accordance with Test Method 4010 in Federal Test Method Standard 191A.

(2) The generic chemical composition of the thread must be determined by qualitative infrared analysis, thermogravimetric analysis, differential scanning calorimeter, or other equivalent means adequate to conclusively identify the composition of the product tested.

(3) Elongation at break must be determined on the same samples tested for single strand breaking test in accordance with § 164.023-7(a)(1) or (b)(1), as appropriate.

§ 164.023-13 Production tests and inspections.

(a) *Manufacturer's test equipment and facilities.* The manufacturer shall provide the following test equipment and facilities for use in production tests and inspections:

(1) A Constant Rate of Traverse tensile testing machine, capable of initial clamp separation of ten inches and a rate of separation of 30 cm (12 in.) per minute.

(2) Fletcher, Callaway, U.S. Rubber clamps, or equivalent cam-actuated clamps to prevent slippage and twist of the samples.

(3) An analytical balance or grain-yarn scale, accurate to within 0.25 percent of the measured value.

(b) *Lot size.* Lot size must not exceed 460,000 meters (500,000 yds.) or 45 kg (100 lb.) of any color.

(c) *Sample selection.* Samples must be selected at random by the manufacturer (or inspector, as applicable) after the entire lot of thread has been completed.

(d) *Second sampling.* A second sampling, where required, must consist of five times the original sample size.

(e) *Manufacturer's production tests.*

The component manufacturer shall perform the following tests on the samples indicated (each sample to include at least 5 specimens unless otherwise specified in the referenced test procedure) on each lot of thread:

(1) *Breaking strength.* One sample must be tested in accordance with

§ 164.023-7(a)(1) or § 164.023-7(b)(1), as applicable.

(2) *Length/weight ratio.* One sample must be tested in accordance with § 164.023-11(b)(1).

(f) *Recognized laboratory production tests.* Manufacturers shall ensure that the following tests and inspections are performed on non-standard components by a recognized laboratory:

(1) *Composition.* At least annually, one sample of each accepted thread must be tested in accordance with § 164.023-11(b)(2).

(2) *Breaking strength.* At least quarterly, one sample in each of the lightest and darkest colors accepted must be tested in accordance with § 164.023-7(a)(1) or § 164.023-7(b)(1), as applicable. This test may be performed by a recognized laboratory, or witnessed by a recognized laboratory inspector at the manufacturer's plant, at the laboratory's discretion.

(3) *Elongation.* At least annually, one sample of each accepted thread in each of the lightest and darkest colors accepted must be tested in accordance with § 164.023-11(b)(3). This test may be performed by a recognized

laboratory, or witnessed by a recognized laboratory inspector at the manufacturer's plant, at the laboratory's discretion.

(g) *Accept/reject criteria.* Unless the alternate procedures as permitted by § 164.019-013(m) are followed, the results of required production testing on a lot must meet the following criteria for the lot to be shipped as Coast Guard-accepted thread:

(1) Breaking strength test results must be within 10 percent below and 20 percent above the acceptance testing values but not less than the performance minimums.

(2) Length/weight values must be within 5 percent of the acceptance testing values but not less than the performance minimums.

(3) Elongation values must be within 20 percent of the acceptance testing values but not less than the performance minimums.

(4) Composition testing must indicate that the sample tested is of identical composition to the sample tested for acceptance or in accordance with the performance specification.

§ 164.023-15 Marking.

(a) *General.* The manufacturer must ensure that each shipping label, and each spool or individual unit of put-up, is permanently and clearly marked in a color which contrasts with the color of the surface on which the marking is applied. Each label must be marked with—

(1) The manufacturer's or supplier's name, trade name, or symbol;

(2) The unique style, part, or model number of the thread;

(3) The size of the thread;

(4) The composition of the thread; and

(5) The lot number of the thread.

(b) *Non-standard thread.* In addition to the markings specified in paragraph (a) of this section, each unit of put-up of non-standard thread must be marked with the appropriate recognized laboratory's certification marking(s).

Dated: May 14, 1993.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

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**Thursday
May 20, 1993**

Part VI

**Department of
Transportation**

Coast Guard

46 CFR Part 28

**Immersion Suits for Documented and
Undocumented Commercial Fishing
Industry Vessels Operating on Coastal
Waters That Are Only Seasonally Cold;
Proposed Rules**

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 28

(CGD 88-079c)

RIN 2115-AD12

Immersion Suits for Documented and Undocumented Commercial Fishing Industry Vessels Operating on Coastal Waters That Are Only Seasonally Cold

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing a regulation to require the carriage of immersion suits for each individual on board undocumented commercial fishing industry vessels operating on coastal waters which are only seasonally cold; and documented commercial fishing industry vessels operating inside the Boundary Line on coastal waters which are only seasonally cold. This regulation is intended to improve the overall safety of commercial fishing industry vessels.

DATES: Comments must be received on or before August 18, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 88-079c), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except holidays. The telephone number is (202) 267-1477 for further information regarding submission of comments.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Tim Skuby, Office of Marine Safety, Security and Environmental Protection (G-MVI-4), room 1405, U.S. Coast Guard Headquarters, Washington, DC 20593-0001, (202) 267-2307.

SUPPLEMENTARY INFORMATION:**Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 88-079c) and the specific section of this proposal to which each comment applies, and give a reason for each

comment. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider comments received during the comment period. It may change this proposal in view of the comments.

Public Hearings

The Coast Guard plans no public hearings. Persons may request a public hearing by writing the Marine Safety Council at the address under **ADDRESSES**. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Tim Skuby, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Lieutenant Ralph L. Hetzel, Project Counsel, Office of Chief Counsel.

Background and Purpose

Public Law 100-424, known as the "Commercial Fishing Industry Vessel Safety Act of 1988" (the Act), required the Secretary of Transportation to prescribe regulations for certain safety equipment and vessel operating procedures for U.S. documented or state numbered uninspected fishing, fish processing, and fish tender vessels. In particular, 46 U.S.C. 4502(a)(2) requires that all vessels have "at least one readily accessible life preserver or other lifesaving device for each individual on board." In addition, 46 U.S.C. 4502(b)(3) requires that all documented vessels that operate beyond the Boundary Line or that operate with more than 16 individuals on board, have "at least one readily accessible immersion suit for each individual on board that vessel when operating on the Atlantic Ocean north of 32 degrees North latitude or south of 32 degrees South latitude and in all other waters north of 35 degrees North latitude or south of 35 degrees South latitude." The notice of proposed rulemaking (NPRM) (CGD 88-079), which was published in the **Federal Register** on April 19, 1990 (55 FR 14924), proposed the requirement that there be an immersion suit for each individual on board all vessels operating on either the east or west coasts of the United States, beyond the Boundary Line and north of 32°N or south of 32°S; or on the Great Lakes. The proposal did not include requiring immersion suits for each individual on

board vessels operating near shore, or on inland or coastal waters that were also "cold waters." Additionally, the NPRM proposed that the 32°N and 32°S latitudes be adopted as the exemption lines for all waters for commercial fishing industry vessels, in lieu of 32°N and 32°S for the Atlantic and 35°N and 35°S for all other waters as prescribed in 46 U.S.C. 3102. The rationale for this proposal, as presented in the preamble to the final rule (CGD 88-079), centered around the fact that the winter water temperatures in the Pacific Ocean near the coastline of the U.S. are actually colder than in the Atlantic Ocean at the same time of the year. Therefore, the Pacific and other waters should be similarly covered by at least the same exemption lines.

In the preamble to the final rule (CGD 88-079), the Coast Guard also stated its conclusion that immersion suits were of critical importance in cold waters where hypothermia could cause death in a matter of minutes. Additionally, it was the Coast Guard's opinion that the authority to extend the requirement for immersion suits for certain vessels was provided in section 4502(a)(2) of the Act. Therefore, the Coast Guard decided to require all commercial fishing industry vessels, documented and undocumented, to have immersion suits for each individual on board when operating on or beyond the following coastal waters when they are also "cold waters":

1. The territorial seas of the United States;
2. The U.S. waters of the Great Lakes (Lake Erie, Huron, Michigan, Ontario, and Superior); or
3. Those Waters directly connected to the Great Lakes or territorial seas (i.e. bays, sounds, harbors, rivers, inlets, etc.) where any entrance exceeds 2 nautical miles between opposite shorelines to the first point where the largest distance between shorelines narrows to 2 miles, as shown on the current edition of the appropriate National Ocean Service chart used for navigation. Shorelines of islands or points of land present within a waterway are considered when determining the distance between opposite shorelines.

The final rule (CGD 88-079) was published in the **Federal Register** on August 14, 1991 (56 FR 40364), and became effective September 15, 1991, except that vessels were not required to be in compliance with the immersion suit requirements until November 15, 1991.

In order to specify the safety/survival equipment carriage requirements for waters other than "oceans", the definition of "coastal waters" contained in 33 CFR 175.105 was utilized as it was in defining the requirements for distress signals. However, use of the "coastal waters" concept as a means of defining the waters where personal flotation devices and immersion suits are required was not presented in the NPRM and the public did not have the opportunity to comment on its use for that purpose. Similarly, the requirement to have immersion suits was tied to "cold water" as defined in 46 CFR 28.50. This term not only served to limit the geographic coverage of the term "coastal waters", it also provided for the seasonal application of the requirements. For example, a vessel operating in "coastal waters" that are never cold is not required to have immersion suits onboard. Since the publication of the final rule, the Coast Guard received comments indicating that there was confusion concerning where and when vessels operating in certain inland waters were required to carry immersion suits and comments that the expense of carrying immersion suits was not justified for vessels operating close to shore, generally within the territorial sea. It appeared that the rulemaking would have benefited from the more thorough consideration of, and comments on, when and where immersion suits should be required, other than for ocean areas, which would have resulted if the NPRM had specifically proposed a coverage requirement for these waters. Therefore, the Coast Guard published an interim rule, which deleted the requirement for vessels to carry immersion suits for each individual on board undocumented commercial fishing industry vessels operating on coastal waters which are only seasonally cold, and documented commercial fishing industry vessels operating inside the Boundary Line on coastal waters which are only seasonally cold. "Coastal waters that are only seasonally cold" are defined as the U.S. waters of the Great Lakes, except for Lake Superior; the coastal waters on the entire east coast of the United States; and the coastal waters on the west coast of the United States, south of Point Reyes, CA. This interim rule was published in the Federal Register on August 3, 1992 (57 FR 34188), and became effective the same date. As a result of this action all documented commercial fishing industry vessels that operate:

- (1) On the U.S. waters of the Great Lakes, except for Lake Superior;

- (2) Inside the Boundary Line on coastal waters on the entire east coast of the United States; or
- (3) Inside the Boundary Line on coastal waters on the west coast of the United States, south of Point Reyes, CA., and

all undocumented commercial fishing industry vessels that operate on:

- (1) The U.S. waters of the Great Lakes, except for Lake Superior;
- (2) Coastal waters along the entire east coast of the United States; or
- (3) Coastal waters along the west coast of the United States, south of Point Reyes, CA.,

are no longer required to carry immersion suits for each individual on board. In the interim, these vessels are required to meet the personal flotation device requirements in 46 CFR part 25, subpart 25.25.

For waters not described above, the monthly mean temperature is below 59°F (15°C) at all times. This includes the waters of Lake Superior and the coastal waters along the west coast of the United States, north of Point Reyes, CA. Documented and undocumented commercial fishing industry vessels that operate on these waters, at any time, are unaffected by the suspension of the immersion suit carriage requirement and are still required to carry an immersion suit for each individual on board.

As noted in the interim rule, the Coast Guard solicited proposals from the Commercial Fishing Industry Vessel Advisory Committee ("the Committee") at its May 1992 meeting, concerning the carriage of immersion suits on undocumented commercial fishing industry vessels that operate on coastal waters which are only seasonally cold, and documented commercial fishing industry vessels that operate inside the Boundary Line on coastal waters which are only seasonally cold. The Committee recommended that the Coast Guard propose to reinstate the immersion suit requirement as it was in the final rule (CGD 88-079) published on August 14, 1991. This would mean that these vessels would be required to carry an immersion suit for each individual on board a fishing vessel that is operating on coastal waters when they are also considered to be "cold waters" as defined in 46 CFR 28.50.

The Committee also recommended that these vessels be allowed to carry a Coast Guard approved Type V PFD anti-exposure coverall (approval series 46 CFR 160.053), as an alternative for the immersion suit, provided it is worn when an individual is working on the deck of a vessel underway. The

Committee also recommended that this alternative not be allowed for commercial fishing industry vessels, documented or undocumented, that operate beyond coastal waters that are also cold waters; on coastal waters on the west coast of the United States north of Point Reyes, CA; or on Lake Superior. The Committee noted that the affected vessels generally operate near shore and in close proximity to other vessels. Because of this, there is a tendency for fishermen to have a false sense of security and a reluctance to don immersion suits promptly in an emergency. The Committee agreed that because immersion suits are bulky and cumbersome to work in, fishermen will not wear or don them until every attempt is made to save their vessel and their livelihood. Often this results in donning them too late or not at all.

While the anti-exposure coverall does not provide the same flotation or thermal protection as an immersion suit, fishermen will be able to work while wearing them. This will provide some protection in the event of an accidental fall overboard or if the vessel begins to sink. Additionally, in the latter case, by already wearing the anti-exposure coverall, the fishermen would extend the time that they could use in attempting to save the vessel without increasing the risk of losing their life to the effects of cold water if they were forced to enter the water. The Committee also noted that these anti-exposure coveralls are commonly used by fishermen fishing in the waters in the Northeast. The Coast Guard has taken into account the Committee's recommendation for the anti-exposure coverall alternative and has included a modified version of the alternative in this proposed rule.

The Committee and the Coast Guard both strongly support the need for immersion suits on all fishing vessels that operate on cold waters. However, considering the areas of operation, the close proximity to land, and the congestion of these waters, a relaxation of the requirement, with little adverse effect on safety, may be warranted for vessels operating in coastal waters that are only seasonally cold. For this reason the Coast Guard is proposing to reinstate the immersion suit requirement, as originally published in the final rule (CGD 88-079) on August 14, 1991 (56 FR 40364), and allow the use of a Type V PFD anti-exposure coverall, in lieu of the immersion suit, for documented vessels operating inside the Boundary Line on coastal waters that are only seasonally cold and for undocumented vessels operating on coastal waters that are only seasonally cold. This includes

the following coastal waters when they are considered to be "cold waters":

1. The territorial seas of the United States;
2. The U.S. waters of the Great Lakes (Lake Erie, Huron, Michigan, Ontario, and Superior); or
3. Those waters directly connected to the Great Lakes or territorial seas (i.e. bays, sounds, harbors, rivers, inlets, etc.) where the entrance exceeds 2 nautical miles between opposite shorelines to the first point where the largest distance between shorelines narrows to 2 miles, as shown on the current edition of the appropriate National Ocean Service chart used for navigation. Shorelines of islands or points of land present within a waterway are considered when determining the distance between opposite shorelines.

With regard to the substitution of the Type V PFD anti-exposure coverall for the immersion suit, the Coast Guard will not require that the Type V PFD anti-exposure coverall be worn to be accepted as an appropriate substitute. Instead, the Coast Guard proposes that the Type V PFD anti-exposure coverall merely be required to be onboard. It should be noted that the Type V PFD anti-exposure coverall carries an approval restriction which requires that the PFD be worn in order to be considered acceptable. The Coast Guard is proposing that this restriction be removed when the Type V PFD anti-exposure coverall is carried onboard documented vessels operating inside the Boundary Line on coastal waters that are only seasonally cold and for undocumented vessels that operate on coastal waters that are only seasonally cold, and that the Type V PFD anti-exposure coverall be granted a new approval number. The approval restriction would remain in effect for all other vessels and operating areas. If adopted, new Type V PFD anti-exposure coveralls would be labeled accordingly. Additionally, existing approved Type V PFD anti-exposure coveralls used on these vessels operating in the affected waters would be grandfathered.

For the following reasons the Coast Guard is not proposing to require the wearing of the Type V PFD anti-exposure coverall in order to qualify as an alternative to having the immersion suit onboard:

- (1) The immersion suit is not required to be worn.
- (2) The Type V PFD anti-exposure coverall carries an approval restriction that requires it to be worn. If not worn, it could not be

counted towards meeting the PFD requirement. Therefore, a fisherman, that is operating in "seasonally cold waters" when the water is actually warm (i.e., the water temperature is greater than 59 °F (15 °C)), would be required to either wear the Type V PFD anti-exposure coverall or carry a second approved PFD that carries no restrictions.

- (3) There are also times when the wearing of the Type V PFD anti-exposure coverall would be required but would be unbearably uncomfortable for the fisherman (i.e., when the water temperature is cold (59 °F/15 °C) or less, but the air temperature is warm). In these situations, the fisherman is likely to decide not to wear the Type V PFD anti-exposure coverall and thus be in violation of the PFD/immersion suit requirement or be forced to carry an immersion suit in addition to the Type V PFD anti-exposure coverall. This would eliminate the benefits of permitting the use of the Type V PFD anti-exposure coverall as an alternative to the immersion suit.

To assist a fisherman in determining when the coastal waters and the waters beyond the coastal waters are considered to be "cold" and where the cold water demarcation line is during the different months of the year, the Coast Guard is proposing to add table 28.110(c). This table identifies the cold water areas off the U.S. coasts for each month of the year for the Atlantic Ocean, Pacific Ocean, and the Great Lakes respectively.

Regulatory Evaluation

This proposal is considered to be not major under Executive Order 12291 and significant under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). A regulatory evaluation for the final rule (CGD 88-079) was prepared and placed in the docket. It is applicable to this proposed rule and may be inspected and copied at the address listed under ADDRESSES. This proposal will not change the conclusions of that final regulatory evaluation since it does not introduce any new requirements, but only authorizes some latitude in meting the requirements originally imposed. This proposal does allow an anti-exposure coverall as an alternative for an immersion suit for those individuals on board undocumented commercial fishing industry vessels operating on coastal waters which are only seasonally cold and on board documented

commercial fishing industry vessels operating inside the Boundary Line on coastal waters which are only seasonally cold. However, since the expected costs of both items is approximately the same and fishermen will be allowed to choose either an immersion suit or a Type V PFD anti-exposure coverall, the Coast Guard's position is that the final regulatory evaluation remains valid. This proposal will reinstate the requirement for immersion suits on approximately 48,250 small fishing vessels at an estimated total cost of \$22.5 million. However, based on the compliance/noncompliance percentages used in the final regulatory evaluation, which regulatory evaluation, which is available in the docket for review, the Coast Guard concludes many of the vessel operators or individual crewmembers have already elected to purchase immersion suits as a voluntary safety measure. Therefore, the actual costs may be closer to \$8.5 million. These costs will offset the estimated savings described in the interim rule (CGD 88-079b) published on August 3, 1992 (57 FR 34188) which removed the requirement for certain vessels, in specific waters, to carry the immersion suit. Further, the Coast Guard estimates that the benefits associated with reinstating the requirement for immersion suits or a Type V PFD anti-exposure coverall will approximate \$12 to \$20 million. The Coast Guard estimates that eight lives will be saved annually with reinstatement of the requirement. Economic research indicate that \$2.5 million per statistical life saved is currently a reasonable estimate of people's willingness to pay to avert a fatality. Use of this figure is for ease in calculating costs and benefits of a proposed rule, and should in no way be construed as a value the Coast Guard is willing to place on human life for any other purpose. Previously, the Coast Guard used figure of \$1.5 million per statistical life saved. Multiplying the two figures above by the estimated eight lives allows the calculation of an estimated benefit ranging from \$12 to \$20 million annually.

Regulatory Flexibility Act

This proposal is expected to have a minimal economic impact. Additionally, since this proposal merely reinstates a requirement that was addressed in the final rule, the economic impact to these fishermen has already been accounted for. The temporary minimal negative economic impact that was imposed on the manufacturers and/or suppliers by the interim rule is expected to be eliminated. While the interim rule

resulted in a reduced demand for immersion suits, the demand for immersion suits or the alternative Type V PFD anti-exposure coverall is expected to return to the level experienced prior to the publication of the interim rule. As for the fishermen, the average cost of the immersion suit requirement is expected to be approximately \$540 per vessel. This figure was already incorporated into the final regulatory evaluation. Therefore, the Coast Guard certifies that this proposal will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

The Coast Guard determined that the final rule (CGD 88-079) was categorically excluded from detailed environmental evaluation under section 2.B.2.1 of Commandant Instruction [COMDTINST] M16475.1B as an administrative action which clearly does not have any environmental impacts. Since this proposal reinstates a requirement originally in the final rule, this proposal falls under the original Categorical Exclusion Determination, which is available in the docket for examination.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rulemaking in accordance with the

principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposal reinstates the requirement for undocumented commercial fishing industry vessels that operate on coastal waters that are only seasonally cold, and documented commercial fishing industry vessels that operate inside the Boundary Line, on coastal waters that are only seasonally cold, to carry an immersion suit, as an item of safety equipment for each person on board. The authority to regulate concerning the carriage requirements of safety equipment aboard commercial fishing vessels operating in U.S. waters is committed to the Coast Guard by statute. Furthermore, since commercial fishing vessels tend to move from port to port in the national marketplace, carriage requirements for safety equipment is a matter for which regulations should be of national scope to avoid unreasonably burdensome variances. Therefore, if this rule becomes final, the Coast Guard intends it to preempt State action addressing the same matter.

List of Subjects in 46 CFR Part 28

Fire prevention, Fishing vessels, Lifesaving equipment, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

In consideration of the foregoing, the Coast Guard proposes to amend chapter

I, title 46, Code of Federal Regulations, part 28 as follows:

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

1. The authority citation for part 28 continues to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4506, 6104, 10603; 49 U.S.C. App. 1804; 49 CFR 1.46.

2. Section 28.50 is amended by adding the following definition, in alphabetical order, to read as follows:

§ 28.50 Definition of terms used in this part.

* * * * *

Coastal waters that are only seasonally cold means the U.S. waters of the Great Lakes, except for Lake Superior; the coastal waters on the entire east coast of the United States; and the coastal waters on the west coast of the United States, south of Point Reyes, CA and the waters of Drakes Bay which is north of Point Reyes, CA.

* * * * *

3. Section 28.110 is amended by revising Table 28.110 and redesignating it as Table 28.110(a) and Table 28.110(b); and adding Table 28.110(c) to read as follows:

§ 28.110 Life preservers or other personal flotation devices.

* * * * *

TABLE 28.110(A).—PERSONAL FLOTATION DEVICES AND IMMERSION SUITS FOR DOCUMENTED VESSELS

Applicable waters	Vessel type	Devices required	Other regulations
Seaward of the boundary line and north of 32° N or south of 32° S; and Lake Superior.	All	Immersion suit or exposure suit ¹ .	28.135; 25.25-9(a); 25.25-13; 25.25-15.
Coastal waters on the west coast of the United States north of Point Reyes CA, except for Drakes Bay.	All	do ¹	do.
Beyond coastal waters, cold water; (See Table 28.110(c) and.	do	do ¹	do.
Lake Superior	do	do ¹	do.
Inside the boundary line on coastal waters that are only seasonally cold—cold water months. (See Table 28.110(c).	All	Immersion suit or Type V anti-exposure coverall ² .	28.135; 25.25-9(a); 25.25-13; 25.25-15.
Inside the boundary line on coastal waters that are only seasonally cold—warm water months. (See Table 28.110(c).	40 feet (12.2 meters) or more in length.	Type I, Type V commercial hybrid, immersion suit, exposure suit, or Type V anti-exposure coverall ² .	28.135; 25.25-5(e); 25.25-5(f); 25.25-9(a); 25.25-13; 25.25-15.
Do	Less than 40 feet (12.2 meters) in length.	Type I, Type II, Type III, Type V commercial hybrid, immersion suit, exposure suit, exposure suit, or Type V anti-exposure coverall ² .	do.
All other waters	40 feet (12.2 meters) or more in length.	Type I, Type V commercial hybrid, immersion suit, or exposure suit ³ .	28.135; 25.25-5(e); 25.25-5(f); 25.25-9(a); 25.25-13; 25.25-15.

TABLE 28.110(A).—PERSONAL FLOTATION DEVICES AND IMMERSION SUITS FOR DOCUMENTED VESSELS—Continued

Applicable waters	Vessel type	Devices required	Other regulations
Do	Less than 40 feet (12.2 meters) in length.	Type I, Type II, Type III, Type V commercial hybrid, immersion suit, or exposure suit ³ .	do.

¹ Until September 1, 1995, individuals weighing less than 44 pounds (196 Newtons) may substitute an approved personal flotation device of the appropriate size for a required immersion suit or exposure suit.

² Anti-exposure coverall, Coast Guard approved as a Type V PFD under approval number 160.053, may be substituted for the immersion suit or the required personal flotation device.

³ Certain Type V personal flotation devices are approved for substitution for Type I, II, or III personal flotation devices when used in accordance with the conditions stated in the Coast Guard approval label.

TABLE 28.110(b).—PERSONAL FLOTATION DEVICES AND IMMERSION SUITS FOR UNDOCUMENTED VESSELS

Applicable waters	Vessel type	Devices required	Other regulations
Coastal waters on the west coast of the United States north of Point Reyes CA, except for Drakes Bay.	All	Immersion suit or exposure suit. ¹	28.135; 25.25-9(a); 25.25-13; 25.25-15.
Beyond coastal waters, cold water; (See Table 28.110(c)) and.	.....do .....	.....do ¹	do.
Lake Superior .....	.....do .....	.....do ¹	do.
Coastal waters that are only seasonally cold—cold water months. (See Table 28.110(c)).	All	Immersion suit or Type V anti-exposure coverall.	28.135; 25.25-9(a); 25.25-13; 25.25-15.
Coastal waters that are only seasonally cold—warm water months. (See Table 28.110(c)).	All	Type I, Type II, Type III, Type V commercial hybrid, immersion suit, exposure suits, or Type V anti-exposure coverall. ²	28.135; 25.25-5(e); 25.25-5(f); 25.25-9(a); 25.25-13; 25.25-15.
All other waters	40 feet (12.2 meters) or more in length.	Type I, Type V commercial hybrid, immersion suite, or exposure suit. ³	28.135; 25.25-5(e); 25.25-5(f); 25.25-9(a); 25.25-13; 25.25-15.
Do	Less than 40 feet (12.2 meters) in length.	Type I, Type II, Type III, Type V commercial hybrid, immersion suit, or exposure suit. ³	do.

¹ Until September 1, 1995, individuals weighing less than 44 pounds (196 Newtons) may substitute an approved personal flotation device of the appropriate size for a required immersion suit or exposure suit.

² Anti-exposure coverall, Coast Guard approved as a Type V PFD under approval number 160.053, may be substituted for the immersion suit or the required personal flotation device.

³ Certain Type V personal flotation devices are approved for substitution for Type I, II, or III personal flotation devices when used in accordance with the conditions stated in the Coast Guard approval label.

Table 28.110(c).—Cold Water Areas, Coastal Waters and Beyond, Offshore of the United States (Atlantic Ocean, Pacific Ocean and the Great Lakes)

Atlantic Ocean—The cold water areas in the Atlantic Ocean are as follows for the indicated months of the year:

Dec—Apr—North of Cape Hatteras, North Carolina (Cape Hatteras Light, 35°15.3' N latitude).

May—North of Cape Charles, Virginia (Cape Charles Light, 37°07.4' N latitude).

Jun—North and east of a line which is drawn bearing 150° True from Watch Hill Light, Rhode Island (41°18.2' N latitude, 71°51.5' W longitude); and north of Ambrose Light (40°27.6' N latitude) 20 or more nautical miles offshore.

Jul—Sep—North of Halifax, Nova Scotia (Chebucto Head Light, 44°30.4' N latitude), not including Bay of Fundy; and north of Cape Cod, Massachusetts (Highland Light, 42°02.4' N latitude) 20 or more nautical miles offshore.

Oct—North and east of a line which is drawn bearing 150° True from Watch Hill Light, Rhode Island (41°18.2' N latitude, 71°51.5' W longitude); and north of Ambrose Light (40°27.6' N latitude) 20 or more nautical miles offshore.

Nov—North of Cape Charles, Virginia (Cape Charles Light, 37°07.4' N latitude).

Pacific Ocean—The cold water areas in the Pacific Ocean are as follows for the indicated months of the year:

Jan—Feb—All ocean waters off the continental United States and Alaska.

Mar—Apr—North and west of a line which is drawn 255° True from San Mateo Point Light, California (33°23.2' N latitude, 117°35.7' W longitude); all other ocean areas more than 20 nautical miles offshore of the continental United States.

May—North and west of a line which is drawn 255° True from San Mateo Point Light, California (33°23.2' N latitude, 117°35.7' W longitude).

Jun—Aug—North of San Luis Obispo, California (San Luis Obispo Light, 35°09.6' N latitude); and north and west of a line which is drawn 255° True from San Mateo Point Light, California (33°23.2' N latitude, 117°35.7' W longitude), more than 20 nautical miles offshore of the continental United States.

Sep—North of Point Reyes, California (Point Reyes Light, 37°59.7' N latitude), not including Drakes Bay.

Oct—Dec—North of San Luis Obispo, California (San Luis Obispo Light, 35°09.6' N latitude).

Great Lakes—The cold water areas in the Great Lakes are as follows for the indicated months of the year:

Oct—May—All Great Lakes.

Jun—Lakes Superior, Michigan, Ontario, and Huron except for Saginaw Bay.

Jul—Lakes Superior, and Huron, except for Saginaw Bay.

Aug—Sep—Lake Superior.

Dated: May 14, 1993.

A.E. Henn,

*Rear Admiral, U.S. Coast Guard, Chief, Office
of Marine Safety, Security and Environmental
Protection.*

[FR Doc. 93-11856 Filed 5-19-93; 8:45 am]

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Transportation Day and Week, 1988

Federal Register

Thursday
May 20, 1993

Part VII

The President

Executive Order 12847—Amending
Executive Order No. 11423

Permit of May 17—Permit Authorizing the
Canadian National Railway Company,
Grand Trunk Corporation and any
Subsidiaries To Construct, Operate, and
Maintain a Replacement International
Railway Tunnel at the International
Boundary Line Between the United States
of America and Canada

Executive Order 12848—Federal Plan To
Break the Cycle of Homelessness

Proclamation 6562—National Defense
Transportation Day and National
Transportation Week, 1993

May 20, 1953

Part VII

The President

Executive Order 12147—Amending
Executive Order No. 11873

Transit of May 17—General Authority for
Canadian National Railway Company,
Grand Trunk Corporation and any
Subsidiaries to Construct, Operate and
Maintain a Transportation International
Railway Tunnel in the International
Boundary Line Between the United States
of America and Canada

Executive Order 12048—Federal Plan To
Break the Cycle of Homelessness

Proclamation 3257—National Defense
Transportation Day and National
Transportation Week 1953

Presidential Documents

Title 3—

Executive Order 12847 of May 17, 1993

The President

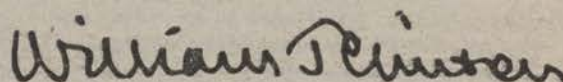
Amending Executive Order No. 11423

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and in order to amend Executive Order No. 11423 of August 16, 1968, to provide for the issuance of permits for the full range of facilities that may be constructed and maintained on the borders of the United States, it is hereby ordered as follows:

Section 1. Section 1(a) of Executive Order No. 11423 is amended to read: "Except with respect to facilities covered by Executive Order Nos. 10485 and 10530, the Secretary of State is hereby designated and empowered to receive all applications for permits for the construction, connection, operation, or maintenance, at the borders of the United States, of: (i) pipelines, conveyor belts, and similar facilities for the exportation or importation of petroleum, petroleum products, coal, minerals, or other products to or from a foreign country; (ii) facilities for the exportation or importation of water or sewage to or from a foreign country; (iii) facilities for the transportation of persons or things, or both, to or from a foreign country; (iv) bridges, to the extent that congressional authorization is not required; and (v) similar facilities above or below ground."

Sec. 2. Section 1(b) of Executive Order No. 11423 of August 16, 1968, is amended by deleting the text "subsection (a) (iii) or (iv)" and by inserting "subsection (a) (iii), (iv) or (v)" in lieu thereof.

Sec. 3. All permits heretofore issued with respect to matters described in section 1 of Executive Order No. 11423, and in force at the time of issuance of this order, and all permits issued hereunder, shall remain in effect in accordance with their terms unless and until modified, amended, suspended, or revoked by the appropriate authority.



THE WHITE HOUSE,
May 17, 1993.

Psychological Experiments

Experiment 1: The Stroop Effect

The Stroop effect is a phenomenon in which the time taken to read a word is longer when the word is printed in a color that does not match the word's meaning than when the word is printed in a color that matches the word's meaning. This experiment was designed to investigate the Stroop effect and its implications for cognitive processing.

The experiment involved two conditions. In the first condition, participants were asked to read a list of words printed in black ink. In the second condition, participants were asked to read a list of words printed in a color that did not match the word's meaning (e.g., the word "red" printed in blue ink). The time taken to read each word was recorded, and the difference in reading times between the two conditions was calculated.

The results of the experiment showed that participants took significantly longer to read words in the second condition than in the first condition. This finding is consistent with the Stroop effect, which suggests that there is a conflict between the automatic process of reading the word and the controlled process of reading the color. This conflict slows down the reading process.

Experiment 2: The Priming Effect

The priming effect is a phenomenon in which the exposure to a stimulus (e.g., a word or image) influences the response to a subsequent stimulus. This experiment was designed to investigate the priming effect and its implications for cognitive processing.

The experiment involved two conditions. In the first condition, participants were asked to read a list of words. In the second condition, participants were asked to read a list of words that had been primed (e.g., the word "cat" was primed by the word "dog"). The time taken to read each word was recorded, and the difference in reading times between the two conditions was calculated.

The results of the experiment showed that participants took significantly longer to read words in the second condition than in the first condition. This finding is consistent with the priming effect, which suggests that the exposure to a stimulus influences the response to a subsequent stimulus. This influence can be either facilitatory or inhibitory, depending on the nature of the stimuli and the task.

Presidential Documents

Permit of May 17, 1993

Permit Authorizing the Canadian National Railway Company, Grand Trunk Corporation and any Subsidiaries To Construct, Operate, and Maintain a Replacement International Railway Tunnel at the International Boundary Line Between the United States of America and Canada

By the authority vested in me as President by the Constitution and laws of the United States of America, I hereby grant permission to Permittees, the Canadian National Railway Company, a Canadian Corporation with its principal offices in Montreal, Quebec, and its wholly-owned U.S. subsidiary, the Grand Trunk Corporation, a Delaware corporation with its principal offices in Detroit, Michigan, and any jointly owned subsidiaries, to construct, operate, and maintain an international railway tunnel across the international boundary between the United States and Canada, between Port Huron, Michigan, and Sarnia, Ontario, Canada, under the St. Clair River.

I have reviewed the application of the Permittees and find that the issuance of a Permit would serve the national interest. The Department of State, Department of Defense, Department of Interior, Department of Justice, Department of Transportation, Department of the Treasury, and the Federal Emergency Management Agency have raised no objection to issuance of the Permit. Pursuant to the Rivers and Harbors Appropriations Act of 1899, 33 U.S.C. § 403, the Corps of Engineers has also determined that the issuance of a Permit is appropriate and consistent with the public interest.

The term "facilities" as used in this permit means the rail tunnel and any land, structures, installations or equipment appurtenant thereto.

The term "United States facilities" as used in this permit means that part of the facilities in the United States.

As stated in Permittees' application of May 8, 1992, for a permit, including their accompanying submission of a feasibility study entitled "St. Clair, Initial Environmental Evaluation/Environmental Study Report," dated February 1992, and subsequent exchange of information, the United States facilities of the rail tunnel will consist of the following major components:

- A new tunnel bored beneath the St. Clair River, and deepening the existing open cuts on the Port Huron, Michigan, approach to develop portals for construction of the tunnel.

- The summit-to-international boundary length of the project within the United States is 5,853 feet (of a total summit-summit length of 12,726 feet). The length of the new tunnel, U.S. portal to international boundary, is approximately 2,749 feet (of a total portal-portal length of 6,136 feet).

- The new tunnel is located approximately on a tangent with an 89 foot offset north of the existing tunnel. A horizontal curve in the Sarnia, Ontario, portal narrows the difference in tunnel centerlines to 55 feet at the exit of the Sarnia, Ontario, portal. The vertical alignment is based on a maximum grade of 2.1 percent. The tunnel will have a downgrade of 1.8 percent from the Sarnia portal and 2.1 percent from the Port Huron portal with 0.35 percent grade under the river. The tunnel will have a minimum of 15 feet of cover over the crown under the river portion of the project. The interior diameter of the finished tunnel will be approximately 27 feet, 6 inches.

—The tunnel will be used for rail transport of freight and passengers. This permit is subject to the following conditions:

Article 1. The United States facilities and operations herein described shall be subject to all the conditions, provisions, and requirements of this permit or any amendment thereof. This permit may be terminated at the will of the President of the United States of America, the Secretary of State of the United States of America or the Secretary's delegate or may be amended by the President, the Secretary of State or the Secretary's delegate at will or upon proper application therefor. Permittees shall make no substantial change in the location of the United States facilities or in the operation authorized by this permit until such changes shall have been approved by the President of the United States of America, or the Secretary of State of the United States of America or the Secretary's delegate.

Article 2. The construction, operation, and maintenance of the facilities shall be in all material respects as described in Permittees' application of May 8, 1992, and documentation submitted in support thereof.

Article 3. The construction, operation, and maintenance of the United States facilities shall be subject to inspection and approval by the representatives of any Federal or State agency concerned. The Permittees shall allow duly authorized officers and employees of such agencies free and unrestricted access to said facilities as is necessary for the performance of their official duties.

Article 4. Permittees shall comply with all applicable Federal and State laws and regulations regarding the construction, operation, and maintenance of the United States facilities.

Article 5. Upon termination, revocation, or surrender of this permit, and unless otherwise agreed by the President of the United States of America or the Secretary of State of the United States of America or the Secretary's delegate, the United States facilities in the immediate vicinity of the international boundary line shall be filled in by and at the expense of the Permittees within such time as the President or the Secretary of State or the Secretary's delegate may specify, and upon failure of the Permittees to remove this portion of the United States facilities as ordered, the President or Secretary of State or the Secretary's delegate may direct that possession of such facilities be taken and that they be removed at the expense of the Permittees; and the Permittees shall have no claim for damages by reason of such possession or removal.

Article 6. This permit is subject to the limitations, terms, and conditions contained in any order issued by any competent agency of the United States Government or of the State of Michigan with respect to the United States facilities. This permit shall continue in force and effect so long as the Permittees shall continue the operations hereby authorized in accordance with such limitations, terms, and conditions.

Article 7. When, in the opinion of the President of the United States of America, the national security of the United States demands it, due notice being given by the Secretary of State of the United States of America or the Secretary's delegate, the United States shall have the right to enter upon and take possession of any of the United States facilities or parts thereof; to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes; and thereafter to restore possession and control to the Permittees. In the event that the United States shall exercise such right, it shall pay to the Permittees just and fair compensation for the use of such United States facilities upon the basis of reasonable profit in normal conditions as existed at the time of entering and taking over the same, less the reasonable value of any improvements that may have been made by the United States.

Article 8. Any transfer of ownership or control of the United States facilities or any part thereof shall be immediately notified to the Department of

State in writing. This permit shall remain in force, subject to all the conditions, provisions, and requirements of this permit or any amendments thereof.

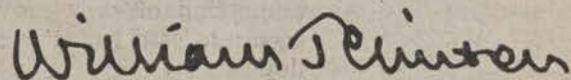
Article 9. (1) The Permittees shall maintain the United States facilities and every part thereof in a condition of good repair for their safe operations.

(2) The Permittees shall save harmless the United States from any claimed or adjudged liability arising out of the construction, operation, or maintenance of the facilities.

Article 10. The Permittees shall acquire such right-of-way grants, easements, permits and other authorizations as may become necessary and appropriate.

Article 11. The Permittees shall file with the appropriate agencies of the United States Government such statements or reports under oath with respect to the United States facilities, and/or Permittees' activities and operations in connection therewith, as are now, or as may hereafter be required under any laws or regulations of the Government of the United States or its agencies.

In Witness Whereof, I, William J. Clinton, President of the United States of America, have hereunto set my hand this seventeenth day of May, 1993 in the City of Washington, District of Columbia.



THE WHITE HOUSE,
Washington, May 17, 1993.

[FR Doc. 93-12219

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